

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

In The United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 14,796

United States Court of Appeals
For the
District of Columbia Circuit

FILED FEB 19 1959

Joseph W. Stewart
CLERK

463

ADAM C. WILLIAMS,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

**APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA**

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JOINT APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 14,796

ADAM C. WILLIAMS,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

[Filed May 12, 1958]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Impanelled February 27, 1958, Sworn in on March 4, 1958

The United States of America	:	Criminal No. 495-58
v.	:	Grand Jury No. 560-58
Adam C. Williams	:	Second Degree Murder (22 D. C. C. 2403)

The Grand Jury charges:

On or about April 19, 1958, within the District of Columbia, Adam C. Williams, with malice aforethought, murdered Augustus S. Blenheim by means of striking him on the head with a brick.

A TRUE BILL:

/s/ Illegible.

Foreman

/s/ OLIVER GASCH

Attorney of the United States in
and for the District of Columbia

[Filed July 21, 1958]

Grand Jury Impanelled June 26, 1958, Sworn in on July 1, 1958

* * * * *

Criminal No. 699-58

Grand Jury No. Orig.

The Grand Jury charges:

On or about April 19, 1958, within the District of Columbia, Adam C. Williams, with malice aforethought, murdered Augustus S. Blenheim by means of striking him with his fist.

A TRUE BILL

/s/ Illegible.

Foreman

/s/ OLIVER GASCH

Attorney of the United States in
and for the District of Columbia

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DISTRICT OF COLUMBIA - CITY OF WASHINGTON

Before the Coroner

- - - - - x

In the matter of :

AUGUSTUS BLANHEIM :

Case No. 23-949

Deceased :

- - - - - x

**TRANSCRIPT OF THE STENOTYPE REPORT OF PROCEEDINGS HAD
& TESTIMONY TAKEN BEFORE THE CORONER, DR. A. MAGRUDER
MACDONALD, IN AND FOR THE DISTRICT OF COLUMBIA.**

Washington, D. C.

April 22, 1958

Pursuant to notice theretofore given to all known interested parties, testimony in the matter of the death of AUGUSTUS BLANHEIM was taken at an inquest before the Coroner in the District of Columbia Morgue, Washington, D. C., there being

P R E S E N T:

DOCTOR A. MAGRUDER MACDONALD, Coroner in and for the District of Columbia;

FRANK WILSON, Esq., representing the United States Attorney's Office;

THE DEFENDANT, Adam Clay Williams; and the following named selected members of the

CORONER'S JURY:

William Taneil

Arthur D. Boggs

Edward N. Riley

Murray Sineoff

Felix McDonald

Vernon Buppert

The remains of the deceased, AUGUSTUS BLANHEIM, were then and there identified to the members of the Coroner's Jury by the Coroner, and the Jurors were thereupon duly sworn by the Coroner in accordance with the form of the statute, in such case made and provided, to enquire when, where, how and after what manner the said AUGUSTUS BLANHEIM came to his death.

PROCEEDINGS, TRANSACTIONS AND TESTIMONY

CORONER:

Q. What is your name, please? A. Adam Clay Williams.

Q. Do you know where you are? A. Yes, sir.

Q. Do you know why you're here? A. Yes, sir.

Q. You're not represented by counsel are you? A. No, sir.

Q. All right, if you have any questions you wish to ask of the witnesses as they testify, we'll give you that chance. Now don't tell them anything. You ask the witness what you want to know, don't you tell the witness anything. If

later on you want to talk to the Jury, I'll tell you how you do that.

"Incidental for the Coroner's Inquest

"Metropolitan Police Department

"Washington, D. C.

"April 22, 1958

"Precinct Second

"To the Coroner:

"To the Chief of Police:

"To the Homicide Squad, Detective Bureau:

"DEATH OF AUGUSTUS BLANHEIM:

"About 1:30 A. M., April 19, 1958, during an altercation at the northwest corner of Vermont Avenue and R Street, Northwest, Augustus Blenheim, colored, male, 43 years, of 1012 4th Street, Northwest, was struck on the head with a brick held in the hands of a man later identified as Adam Clay Williams, colored, male, 28 years of 755 Quebec Place, Northwest.

"Blenheim was taken from Vermont Avenue and R Street, Northwest, to his home at 1012 4th Street, Northwest, at about 2:00 A. M., April 19, 1958, by Marvin Alston, colored, male, 24 years, of 636 Orleans Place, Northeast. Marvin has alias of 'MARION'.

"About 11:30 A. M., April 19, 1958, Blenheim was transported to Freedmans Hospital in a private auto by his wife Florence Blenheim where he was treated by Doctor J. Smith of staff for fractured skull and admitted, condition serious. Augustus Blenheim was pronounced dead at 7:12 P. M., Saturday, April 19, 1958, by Doctor William Sunderburk of Freedmans Hospital staff. Body to D. C. Morgue.

"Detective Sergeant Roy C. Schwab of Homicide Squad on scene at Hospital.

"Sergeant Lee of CCR notified at 8:01 P. M., April 19, 1958.

"Adam Clay Williams, colored, male, 28 years of 755 Quebec Place, Northwest, arrested at 926 E Street, Southwest, at 10:30 A. M., April 20, 1958, and charged with Homicide by Detective John W. Cannon, Second Precinct, Case No. 5294.

"Inquest set for 12 noon, April 22, 1958.

"Signed: John W. Cannon, Pvt., Officer making report.

"Signed: John J. Kinney, Acting Captain Second Precinct.

"Signed: William E. Barton, Corporal attending inquest."

Let me have Doctor Funderburk, please.

Thereupon

DR. WILLIAM W. FUNDERBURK

was called to the stand as a witness, and having been duly sworn by the Coroner, was examined, and testified as follows:

CORONER:

Q. Your full name? A. William W. Funderburk.

Q. You're attached to Freedmens Hospital? A. I am.

Q. Doctor, directing your attention to 11:30 A. M., April the 19th -- 7:12 P. M., Saturday, April the 19th, did you pronounce Augustus Blenheim dead?

A. I did.

Q. All right. What was the cause of his death? A. The direct cause, I don't think I could say. He died on the operating table, and I was there at the time.

Q. What was he being operated on for, Doctor? A. He was being operated on for a fractured skull, with bilateral subdural hematomas.

Q. I see. Now, had you seen the man prior to the time that you pronounced him dead? A. Yes, I had. I saw him just after he arrived in the hospital.

Q. Was he conscious at that time? A. He was semi-conscious.

Q. At that time did you make a diagnosis of intracerebral hemorrhage?

A. I did.

Q. Do that to a fractured skull? A. I did.

Q. And he was unconscious at all times? A. He was semi-conscious when he was admitted.

Q. Was he conscious enough to tell you how he received his injuries? A. No, he wasn't.

CORONER: Any questions by the Jury?

(No response.)

Mr. District Attorney?

DISTRICT ATTORNEY: No, sir.

CORONER: Do you wish to ask him any questions?

DEFENDANT:

Q. Was his face broken any place? A. Not his face as I recall.

Q. Lip cut or anything? A. I don't recall his lip being cut.

DEFENDANT: That's all.

CORONER: Sergeant Schwab. All right Doctor, thank you. You're excused.
Thereupon

DET. SGT. ROY C. SCHWAB

was called to the stand as a witness, and having been duly sworn by the Coroner, was examined, and testified as follows:

CORONER:

Q. Your full name? A. Roy C. Schwab, Detective Sergeant, assigned to the Homicide Squad, Metropolitan Police Department.

Q. Now, Sergeant, you investigated the death of Augustus Blenheim? A. Yes, sir, I did.

Q. Tell the Jury what you learned in your investigation. A. I was first informed of this matter shortly after 11:00 A.M., Saturday morning, April the 19th, from Freedmens Hospital that Augustus Blenheim had been brought to the hospital by his wife, Florence; that he was in unconscious condition suffering with a fractured skull, and his condition was serious. I went to the hospital and was unable to interview him. As a result of further investigation and talking to the witness's wife, I learned that he had been brought to his home at 1012 4th Street about 2 A.M., on the 19th, that same day, and that he was loud and boisterous and so forth. His wife put him to bed; that he did not come around and his wife took him to the hospital at 11:00 AM that morning. Interviewed these witnesses that brought him home. As a result of that I found out there had been a crap game at 1711 Vermont Avenue, and that this Augustus Blenheim had been involved in the game. There'd been an argument over some dice, and that he had been struck in the head with a brick by--at that time we didn't know the name of Williams. Later investigation showed that Williams was the man who had

struck him. Now, further investigation at 10:30 A.M., I went to 926 E Street, Southwest, and I found Adam Clay Williams in the back room there in the kitchen. I asked Williams to step into the front room with me, I wanted to talk to him. He stated he would; he went into the front room of this address, 926 E Street, and Williams told me. He said, 'I know what you want to talk to me about.' I said, Yes? He said that he'd had some trouble with this man. He told me that he'd been in a crap game at 1711 Vermont Avenue and that Augustus Williams was playing crap and a man--he didn't know Augustus Williams, but --

Q. That's Blanheim. A. The dead man was playing crap, shooting crap with him and another man was with the deceased, who is Alston here and will testify, and that Alston won some money. That he lost \$17, and that he, Williams, saw Augustus put a pair of crooked dice in the game. I asked him what he meant by crooked dice. He said, pear shaped, they wasn't square. And he accused him of it, and they went outside, finally the game broke up and they all went outside on the street. And he asked for his money back, and Williams stated that Alston offered him \$10 of his money back, and then this Augustus Blanheim spoke up and says, "Don't give him nothing back." And at that time Augustus Blanheim reached into his shirt. He, Williams, jumped over a fence and picked a brick up, and the other people all got in a car and drove up the street. And Blanheim ran up towards R Street, 12th and R, and he chased him, he Williams, and caught up with him. He said when he caught up with him he saw that Blanheim didn't have nothing in his hands; he dropped the brick on the ground and struck Blanheim. When Blanheim grabbed for him, he hit him in the jaw, the face, and knocked him to the sidewalk, and his head hit the sidewalk twice and bounced. He left him laying there, he was unconscious. He came back and one of the men asked him if he'd hit him with a brick. He said, "No, I didn't hit him with a brick, I hit him with my fist." And then he left the scene and went on to a party down southwest.

You'll hear another witness testify that the brick, he still had the brick in his hand when he came back.

CORONER: Any question by the Jury?

(No response.)

Mr. District Attorney?

DISTRICT ATTORNEY: None.

CORONER: Do you wish to ask him any questions?

DEFENDANT: (No response.)

CORONER: Aaron Rogers.

Thereupon

AARON F. ROGERS

was called to the stand as a witness, and having been duly sworn by the Coroner, was examined, and testified as follows:

CORONER:

Q. Your full name? A. Aaron Francis Rogers.

Q. Where do you live? A. 1248 Florida Avenue, Northwest.

Q. What do you do for a living? A. I'm a heavy equipment operator.

Q. Now, do you know Augustus Blanheim? A. Yes, sir, I do.

Q. Do you know Adam Clay Williams? A. No, sir, I don't.

Q. Do you know who I mean when I say Adam Clay Williams? A. Well, they told me who he was Sunday.

Q. All right. Do you see him now? A. Yes, sir, I do.

Q. Where is he? A. This gentleman sitting over here. (Identifies defendant)

Q. All right. Now, did you see any trouble between those two men? A. Well, they had a slight argument.

Q. All right, tell us about it. A. Well, we was all playing crap, and he said Augustus had some bad dice. And he said if you do it again, he say, 'I'll blow you away.' So, the argument lasted a couple of minutes and everybody forgot about it; then we decided to go home. And when we started home, we come out the door and this fellow came out behind us.

Q. Who? A. Mr. Williams.

Q. Yes? A. And he said, "Somebody going to give me my money back." So, this, I can't think of his name, we call him Little Huss, that's the only thing I can remember.

Q. Little Huss? A. Yes, sir. Blanheim. He said, "Well, I haven't got

any money because, I'm broke, you see, I haven't got any money, I can't give you any money." So we got ready to get in the car, he says, "There's nobody going to get into the car unless I get my money back." So one of the fellows that were with us, he got in the car and this fellow jumped over the fence. Mr. Williams jumped over the fence. So everybody scattered because they didn't know whether he was going to shoot or do what. So, the car pulled off and left about four or five of us standing there. So at least we wasn't all standing in a group. We was all scattered out. And so when I got myself together and looked around Blanheim was across the street and this fellow says, "Well, I'll get one of them." Then he ran across the street at Blanheim, so when me and this girl Gertrude got to the corner, he come back past us, say "Well, I didn't hit him with the brick. I hit him with my fist." So Gertrude said, "There's Blanheim lying in the street." So we ran down there to him. And at that time the car came back and we picked him up and put him in the car and carried him to the hospital.

Q. Did you see the brick in Williams' hand when he came back? A. I think he had the brick. I'm not positive.

Q. You're not positive.

CORONER: Any questions by the Jury?

(No response.)

Mr. District Attorney?

DISTRICT ATTORNEY: Yes.

Q. You say you scattered? A. Yes, sir.

Q. Because you didn't know whether the deceased was going to shoot or not. He didn't have a gun, did he? A. Well, it wasn't the deceased that was making the threats. It was Mr. Williams that was making the threats.

Q. Mr. Williams was making the threats? A. Yes, sir.

Q. You didn't know whether he was going to shoot or not? A. Yes, sir.

Q. I see. Was he drunk or sober at the time? A. Well, I was drinking myself

Q. Just answer the question. Was he drunk or sober? A. I don't know.

Q. In your opinion, was he drunk or sober? A. He didn't seem like he was drunk to me.

Q. You think he was sober then? A. Well, I can't judge a person like that because I don't know.

Q. Now, which way did the deceased run; or where did he run to? A. Well, the last I saw him he was making a left turn south on 12th Street--R Street.

Q. All right, and where was Mr. Adams at that time? A. He was crossing R Street between 11th and 12th.

Q. Chasing him? A. Yes, sir.

Q. What did he have in his hand when he was chasing him? A. Well, when he come over the fence, he had a brick.

Q. He had a brick, and as far as you know he didn't throw it away. A. I didn't see him throw the brick, because I wasn't too close to him.

Q. There came a time when he came on back, Williams came back to where you were, and he said that, "I hit him with my hand" or something to that effect? A. Yes, sir.

Q. He still had the brick in his hand at that time, didn't he? A. I don't know whether he did; I think he did, but I'm not positive. I think he had it in his hand because he threw something against the fence.

Q. Didn't he then throw the brick over the fence, or toward the fence? A. Well, something, I don't know whether it was the brick, or what. He threw something.

Q. Didn't you tell the Police officers that it was a brick he threw across the fence? A. I think so.

DISTRICT ATTORNEY: All right, that's all.

CORONER: Do you wish to ask him any questions?

DEFENDANT: Yes, sir.

Q. During the time of the argument, did anyone in the crowd admit the dice was shaped? A. No, didn't nobody admit that they had any bad dice, because the boy asked me, said, he asked me, said, "Did you think I should give him any money back?" I said, "If you had any bad dice," I said, "you should give him the money back," I said, "If you didn't," I said, "I don't see no reason why you should give him some money."

Q. Did anyone in the crowd offer to give back \$10? A. I think so.

DEFENDANT: That's all.

CORONER: Melvin Rush.

Thereupon

MELVIN RUSH

was called to the stand as a witness, and having been duly sworn by the Coroner, was examined, and testified as follows:

CORONER:

Q. Your full name? A. Melvin Rush.

Q. Where do you live? A. 1361 Constitution Avenue, Northeast.

Q. What do you do for a living? A. Clerk-typist.

Q. Were you in this game on the morning of April 19th? A. Yes, I was.

Q. Were there any bad dice in the game? A. I think there were.

Q. Who had them? A. I don't know who had 'em.

Q. Did you win or lose? A. I lost.

Q. Okay. Did you see any trouble between Blenheim and Williams? A.

Well, I didn't exactly see any trouble, see trouble, not there in the house, but after they was on the street there was a discussion about it. It started with Blenheim, but it ended with Blenheim and it took up with someone else.

Q. All right. What happened on the street? A. Well, Williams asked Blenheim for money that was lost in the game, and Blenheim said he had no money. So he left Blenheim alone, and he asked Alston, I think that was his name, Marvin Alston,

Q. Yes? A. --who was the winner of the game, for the money. And they discussed it about ten-fifteen minutes. So Alston decided to give him \$10 of his money and asked him would he accept \$10. He said he would. And someone said, I believe it was Blenheim, that if he didn't owe him, not to give him. So the discussion went back to Alston again. Well, Alston had a friend waiting for him with a car. Alston jumped in the car and the friend took off with Alston. And at that time, Blenheim then took it up. He ran his hand in his shirt and asked Williams did he want to die, he asked him twice. So Williams backed away

from him and he didn't know what he had in his shirt, because I was standing there on the corner, and I backed up myself, mostly behind a tree next to the lamp post. So Williams jumped the fence and jumped back across the fence. Then Alston took off. And after that Rogers and I which was standing there together, we walked to the corner, and when we got to the corner, Williams was coming down the street.

Q. What conversation did you have with Williams at that time when he was coming down the street? A. There wasn't no conversation.

Q. Did he ever say anything about a brick? A. No, he didn't say anything about a brick.

Q. Did he ever say he'd knocked him down with his fist? A. Well, I think he did say that.

Q. He did say that; what else did he say? A. Not at that time. That's all he said, but he didn't say it at that time when he come by that he knocked him down with his--with a brick. After Rogers and I saw this deceased lying on the street we walked up to him to, we thought that he was hurt. We thought that there had been a fist fight and that he was hurt. So we went to him, he was lying on the sidewalk. Rogers raised the left arm and called to him, and he didn't answer. So, he asked me to call an ambulance, and I told him that I didn't have a dime, so he started to give me the dime and just then Marvin Alston and the driver came around the corner; so they pulled to a stop and Rogers told them that the man had been hurt, to get him to the hospital. And I helped them lift the deceased into the car and they took off down the street.

Q. Did you see Williams throw something at a fence? A. No, I didn't.

Q. Okay.

CORONER: Any questions by the Jury?

(No response.)

Mr. District Attorney?

DISTRICT ATTORNEY: Yes.

Q. Did Williams chase the deceased down the street with a brick? A. Well, I didn't see a brick.

Q. Did he chase him down the street? A. Well, he-after he come across the fence he walked to the guy, then the guy, he took off, he well looked--

Q. Took off running? A. Yeah, but it looked as if he might of hit Williams first because Williams did fall, he fell between the two cars.

Q. It looked that way. What did you see? Did you see him hit Williams?
A. Well, I didn't see--

Q. Yes, or No, did you see him hit Williams? A. No I didn't see him hit Williams.

Q. All right now, the deceased ran down the street. Is that correct? A. Yes, he did.

Q. And Williams ran after him? A. Yes he did.

Q. And what did he have in his hand? A. I didn't see anything.

Q. All right. When he came back, what did he have in his hand? A. I still didn't see anything.

DISTRICT ATTORNEY: That's all.

CORONER: Do you wish to ask him any questions?

DEFENDANT: Yes, sir.

Q. During the discussion on the street, did anyone admit that the dice was shaped? -- Crooked at anytime. A. I didn't hear your question.

CORONER: Did anybody admit that the dice were crooked at any time during the discussion on the street? A. I think there was mention that the dice was crooked.

Q. You heard him say that? A. He said that the dice--

Q. Did anybody say that they were, admit it? A. The fellow Marvin, I think he admitted that the dice was bad, and that's why he offered to give up \$10 of the money.

CORONER: Okay.

DEFENDANT: No questions.

CORONER: All right. Marvin Alston.

Thereupon

MARVIN ALSTON

was called to the stand as a witness, and having been duly sworn by the Coroner, was examined, and testified as follows:

CORONER:

Q. Your full name? A. Marvin Alston.

Q. Where do you live? A. 636 Orleans Place, Northeast.

Q. What do you do for a living? A. I'm not working at the present time.

Q. Were you in this crap game on April the 19th? A. Yes, I was.

Q. Did you put bad dice in the game? A. No, sir.

Q. How much did you win? A. I guess it was about \$15. Q. Did you offer to give this man, Adam Clay Williams, \$10 back from the money that you won?

A. That's right, sir.

Q. Why? A. Because he wanted to take it all.

Q. Well, if he lost, why did you want to give it to him, if you won it?

A. Because he was going to take it all. He claimed there were bad dice, but there weren't any bad dice --

(WITNESS REQUESTED TO KEEP VOICE UP)

-- The only dice in the game, were in the game at the beginning. That was the only dice in the whole game. As the game was breaking up, he made a statement that he was going to take his money back anyway.

Q. What happened on the outside? A. Well, he came up and told this other fellow that, to take the money that he had, that he was going to get his money or he was going to blow me away. He was mostly arguing at me because I was the one that won the money, nobody else had won any money.

Q. All right. Did you see him threaten anybody? A. Yes, he threatened Blenheim.

Q. What did Blenheim do? A. Blenheim didn't do anything, he wasn't doing anything.

Q. Did you see Blenheim reach into his shirt? A. No, he didn't.

Q. Did he run? A. Yes, he ran.

Q. And who chased him? A. He chased.

CORONER: Identifies the defendant here.

Q. All right. Did you see what happened to Blenheim after he chased him?

A. No, I didn't.

Q. Did you leave the scene? A. Yes, sir.

Q. Did you come back after Blenheim was hurt? A. That's right.

Q. And you took him home. A. I took him to the hospital first, and then took him home.

Q. What hospital did you take him to? A. Freedmens.

Q. All right. Now, on the way to the hospital, did he tell you anything?

A. No, he was unconscious until we got to the hospital.

Q. And then what did he say at the hospital? A. All he say was that his head was hurtin'.

Q. All right. Now, was he examined there at the hospital? A. No, sir.

Q. Was not examined? A. No, sir.

Q. Then you took him away from the hospital before a doctor saw him?

A. That's right.

Q. Why did you do that? A. Well, as we tried to get him looked at, no one would pay any attention to him, then one of the nurses, the interns came and put a patch on his head, and they still wouldn't look at him, so we took him, we decided to take him to another hospital and on the way out he decided that he wanted to go home. He felt that he would be all right.

CORONER: Any questions by the Jury?

(No response.)

MR. DISTRICT ATTORNEY?

DISTRICT ATTORNEY:

Q. Was the defendant sober? A. Well he was mostly sober than drunk; he had been drinking though.

Q. You would say he was sober? A. Yeah, I'd say he was sober.

Q. He chased the deceased down the street with a brick? A. When he jumped over the yard, he jumped into the yard like he was after a brick.

Q. Did he ever say something to the effect that he was going to blow somebody out of here? A. He told Blenheim that in the game. He told him he was

going to blow him away. He told me that on the outside when we started to get in the car.

Q. Told him that twice then? A. He told me that also. He was mostly--

Q. Told who that also? A. He was mostly after me because I had won the money.

DISTRICT ATTORNEY: That's all.

CORONER: Do you wish to ask him any questions?

DEFENDANT:

Q. You say you seen the defendant chase Blanheim down the street? A. Yes, he did.

Q. All right. You said you got in the car, then you left. A. That's right.

Q. Well then, I was understanding from other witnesses that the car had left before Blanheim was chased down the street. A. No, Blanheim ran for the car just as the boy started the car up. Blanheim made a run for the car and the car drove off and as he ran for the car the boy didn't stop for him. That's when you started chasing him.

Q. If you pulled away in the car, how did you see the fellow chase Blanheim?

A. Well you were chasing Blanheim; before the car even ran away, you had picked up a brick right in the yard. Because I wasn't even in the car when you picked the brick up.

Q. A few seconds ago you say you seen the defendant jump the fence. You didn't know what he picked up, but you guessed it was a brick. A. That's right.

DEFENDANT: Next witness.

CORONER: Florence Blanheim.

Thereupon

FLORENCE BLANHEIM

was called to the stand as a witness, and having been duly sworn by the Coroner, was examined, and testified as follows:

CORONER:

Q. Your full name? A. Florence Constance Blanheim.

Q. Where do you live? A. 1012 4th Street, Northwest.

Q. What is Augustus Blenheim to you? A. He's my husband.

Q. Directing your attention to the early morning of April the 19th, was he brought home to you by Marvin Alston? A. Yes, he was.

Q. What was his condition on arrival at your home? A. My husband's condition was he had a large patch on the back of his head. Marvin and another fellow, I do not know his name, brought him in. He was--couldn't hardly stand then. Marvin helped him, he stood for awhile, Marvin helped him on the divan, and he sit there. His face, I looked at him, and his face, I think it was on his right, down by the chin, was puffed out like a brick or something was in it. And I asked him then where was his teeth. So he said something, mumbled something, and I couldn't understand so Marvin say--I asked them then did they carry him to the hospital. Marvin told me yes, but they didn't stay. They turned around and came back. I asked him who put the patch on his head. I didn't get any answer. So Marvin said, "Man, you all right?" And my husband said, "Yeah, man." And Marvin gave my husband a \$5 bill. They left and he told me he was sorry that he would see me, and I told him all right. I talked with my husband and he couldn't talk very well, and I couldn't understand him. So I asked him, let me help him upstairs. So I had a time getting him up stairs. When I did I laid him on the bed. He said, "You know I love you Florence. Here." And he handed me a five dollar bill, then. He was sitting on the bed and he laid back. He said, "Oh Lord, my head hurts bad" and he rubbed it. I said, will you lie back and I'll get some cold water and bathe it. I said, "Do you want to go to the hospital?" He mumbled, and I couldn't understand him. I get the cold water and applied it to the back of his head where the patch was on. And then he rolled over and he said he was cold. And I understood that and I covered him up.

Q. At any time while you had him home there before you took him to the hospital the next morning, did he ever tell you what happened to him? A. He said someone hit him. That's all I got from him.

CORONER: Any questions by the Jury?

(No response.)

Mr. District Attorney?

DISTRICT ATTORNEY: I have none.

CORONER: Do you wish to ask her any questions?

DEFENDANT: No, sir.

CORONER: All right, that's all. Thank you. All right Doctor Murphy.
Thereupon

DR. J. C. MURPHY

was called to the stand as a witness, and having been duly sworn by the Coroner, was examined, and testified as follows:

DR. MURPHY: I performed an autopsy on the 20th of April at 1:00 P. M. at the D. C. Morgue on a decedent identified by the name of Augustus S. Blenheim. He was a colored man with a given age of 43, weighed 105 pounds, was 5 feet, 5 inches in height. My autopsy revealed that he came to his death as a result of hemorrhage and shock caused by a fracture of the skull.

CORONER: Any questions by the Jury?

(No response.)

Mr. District Attorney?

DISTRICT ATTORNEY? None.

CORONER: Do you wish to ask him any questions?

DEFENDANT: No, sir.

CORONER: All right. Now, I told you about making a statement. We can't make you testify as these other witnesses have. But you have the privilege of standing on your Constitutional rights and not saying anything at this time. If you wish to waive your rights and tell the Jury what happened, you may do so, but you have to do that on your own free will. Do you understand?

DEFENDANT: Yes, sir.

CORONER: It's my duty to warn you that whatever you say may be used for or against you at this hearing, any other hearings or trials of your case in court if such are deemed necessary. Do you understand?

DEFENDANT: (Nodded head affirmatively.)

CORONER: Do you wish to make a statement or not?

DEFENDANT: (Nodded head affirmatively.)

CORONER: You don't want to wait and talk to a lawyer of your own choice or ask the court to appoint a lawyer to represent you? You don't want to do anything. You want to make a statement to this Jury. All right, come up.

(DEFENDANT ASSUMED WITNESS CHAIR.)

CORONER: You're not sworn, you're making a voluntary statement.

Q. Now, what is your full name? A. Adam Clay Williams.

Q. Now, Mr. Williams, I'm telling you that I can't make you testify in this case like the other witnesses. Do you understand? And you don't have to testify in this case which involves your liberty and so forth. You are given certain privileges, that you can stand on your Constitutional rights and remain mute. That means not say anything. Now, if you wish to waive those rights of course, I can't stop you from talking if you make up your mind that you want to talk. But it's also my duty to warn you that whatever you say may be used for or against you at this hearing, or any other hearings or trials of your case in court. Now don't shake your head -- speak. A. Yes, sir.

Q. You understand what I said? A. Yes, sir.

Q. And you don't want to wait and talk to a lawyer of your own choice or have the court appoint a lawyer you may talk to before you make a statement?

A. Well, sir, the court appointed me a lawyer. He hasn't been down here so I may as well take the stand for myself.

Q. You still want to talk? A. Yes, sir.

Q. You understand perfectly what I've said to you? A. Yes, sir.

Q. You go ahead and tell the Jury anything that you wish. A. Well, on the 18th, Friday night, April 18th, around about 11:30 we was all in this man's car. Then the defendant and his friends, they came in, they just came in from a party. They'd all been drinking and high, all except the youngest one in the gang. He was the onliest one there with a clear head. So we started playing craps, so the game was just even up back and forth, back and forth. So the deceased him and the young defendant, they was fussin' together--

DISTRICT ATTORNEY: Doctor, I believe he's using the word defendant incorrectly here. A minute ago you said the deceased and then the defendant. Who did you mean when you said that?

DEFENDANT: I mean the deceased.

DISTRICT ATTORNEY: Who did you mean when you said that?

DEFENDANT: The deceased?

DISTRICT ATTORNEY: You said the deceased and somebody else. Take it from there.

DEFENDANT: Well, the deceased and the fellow, I don't know his name, the young fellow that was on the stand, --

CORONER: Which one? The one in the sweater?

DEFENDANT: Yes, sir.

CORONER: Marvin Alston.

DEFENDANT: The deceased and Alston well, they was hustling, they was working together. And the deceased, to me he appeared to be really drunk - out of his head - at first. He would get the best twist, he would fall across the table and mess up the money and get the best twist. So I figured he was drunk. I didn't pay him much mind. But when he started shootin' the dice, he was throwin' them across the table and the dice fell. So when he come up with the dice and shot the dice across the table, I didn't say anything. I reached and picked up the dice. So I looked at the dice and set the dice down. I told him the dice wasn't right. Well right then after I found out the dice was crooked, they all decided to quit and go. So he walked out the door. So we walked out behind him. So I asked him, I said, you-all wasn't playing a legitimate game. I said, the dice was bad, I said, I'd like to have my money back. He talked and talked until we got up on the corner, talked and talked, so Alston in the meantime get in the car and sat down. So I said, ain't nobody gettin' in until I straighten up my money. So Alston, Alston came to the side and Alston said to me, he says, "Where's the third dice?" I said, "I don't know where the other dice is." I said, "Do you know the dice?" Alston said, "I know the dice was shaped," like that. So he offered to give me ten dollars. Then the deceased said, "Don't give him nothing." He kept running his mouth and I just told him, I said, "Keep quiet, keep out of it." I said, "You was his flunky, but you got caught." Like that, and we ended up talking again, we messed around and messed around. I asked him was he going to give me the change, he said, "No," and messed around; kept his hand in his shirt pocket and

said, "Do you want to get killed?" So then I backed off towards the fence; Alston and the driver of the car, they pulled off. I jumped in the yard and grabbed a brick. When I come back across the fence, the deceased still had his hand in his shirt; when he seen the brick, he took out running. When I caught up with him between the cars, well, I fell. When I fell between the cars, I got up. I chased him to the corner and I caught him at the corner. I didn't have the brick because when I fell between the cars I had dropped the brick; I slipped myself. When I caught up with him, he turned around and grabbed me; I hit him. I hit him on the right side of the face with my fist. That's when he rocked back on his heels and fell. Well I figured he was knocked out, so I walked on down the street. Later Melvin and this other fellow they came up, came around the corner. So he said, so this other fellow asked me, "You didn't hit him with that brick did you?" I said "No, I hit him with my fist," and kept going. So then I passed Melvin. Melvin said "Look at that civilian laying on the ground." I ain't done nothing but knocked him out, and kept walking. Later, that Sunday the detective picked me up. He asked me did I hit Blenheim.

I said, "Yeah, I hit him." He said, "Well, don't you know he died at 7:00 o'clock yesterday morning?" I said, I didn't, if I did, I'd of give myself up. So he asked me did I hit him with the brick. I said, No, I hit him with my fist, but I didn't hit him with the brick. So that's how it was.

CORONER: I have no questions. Gentlemen of the Jury, do you have any questions?

(No response.)

Mr. District Attorney?

DISTRICT ATTORNEY: Yes, sir.

Q. You heard one of the previous witnesses testify, did you not, that you had the brick in your hand when you returned to the presence of the witness and threw it against the fence? A. I heard what he said.

Q. Isn't that in fact what happened? A. As I said, I slipped between the car and I lost it. I did not have the brick.

Q. Answer my question. Didn't you as a matter of fact throw the brick

against the fence when you came back? A. No, I didn't.

Q. Did you throw any brick against the fence when you came back? A. No, I didn't.

Q. Did you at any time say that you were going to blow someone out of here? A. I don't remember saying that.

Q. You don't remember saying that. A. No, I--

Q. Could you have said it? A. If I'd of said it, I'd of remembered. I didn't say it.

Q. You didn't say it. The deceased had his hand in his shirt pocket, you say. You ran and got a brick and went after him. Up to this time, had he made menacing gestures to you, towards you other than just having his hand in his shirt?

A. Well at the time the deceased, he kept walking up and down. I was talking to one of the ladies, the deceased walked up on me. The defendant walked up on me. It was four of them to one of me, and we kept rotating--

Q. You say they walked up on you. What do you mean by that? A. He kept trying to get behind me, tried to box me in.

Q. And where were they when the deceased started to run down the street? Obviously they weren't going to help the deceased. Where were they then? A. Well, they left the deceased holding the bag. They had pulled off in the car, sir.

Q. Then the deceased decided that he'd better leave. A. Yes.

Q. And at that time, nobody was bothering you, were they? A. The deceased still had his hand in his shirt.

Q. All right, but he was running down the street. He had turned-- A. After I came from across the fence--

Q. That's right. You came back from across the fence he turned and ran. A. Yes, sir.

Q. The others had left. They had left, nobody else was around at that time, just the deceased running, the car pulling away, and you --

Q. And this other fellow, and two ladies.

Q. And two ladies. They weren't involved in the altercation in any way, were they? A. The fellow and the two ladies wasn't.

Q. They wasn't. A. No, sir.

Q. They weren't one of the ones that were trying to box you in? A. No. They all were together. All of them was together.

Q. But at that time when the deceased turned and ran, they weren't acting in a menacing manner towards you were they? A. Well, when I came across the fence with the brick, I mean anyone with common sense is not going to run up on a person with a brick.

Q. They sort of-- A. Backed off. Yes, sir.

Q. The deceased ran down the street and you ran after him. A. He didn't run down the street, he runned across it.

Q. He ran across the street, and you ran after him. A. Yes, sir.

Q. With the brick in your hand. A. No, sir. I fell between the cars.

Q. Well, why did you chase him? A. Why did I chase him?

Q. (Illegible) A. I was trying to catch him.

Q. Why? A. So I could find out where the young fellow lived so I could get my money back.

Q. And what did you plan to do after you caught him? A. I wanted to make him tell me where the fellow lived at.

Q. Did he tell you? A. No.

Q. Did he get a chance to tell you? A. No, 'cause he grabbed me.

Q. He grabbed you, and what did you do? A. I hit him.

DISTRICT ATTORNEY: Okay. That's all, Doctor.

CORONER: Okay, that's all. Gentlemen of the Jury, you may take the case. If you believe from the evidence in this case that Augustus Blenheim received injuries that caused his death in an accidental manner, you should bring in such a verdict. On the other hand, if you believe from the evidence in this case that Adam Clay Williams struck this man causing his death in defense of his own life or bodily harm, or the life or bodily harm to any other individual, you should bring in a verdict of Justifiable Homicide.

And furthermore, if you believe from the evidence that Adam Clay Williams hit this man in a willful, wanton manner, or in the heat of passion, or in a malicious

manner, it is your duty then to hold him for the action of the Grand Jury. You may take the case.

(Thereupon, the Coroner's Jury retired to their room for deliberation, returning later the following verdict:)

VERDICT OF THE CORONER'S JURY

County of Washington

District of Columbia

"We believe that Adam Clay Williams is responsible for the death of Augustus Blenheim and hold him for action of the Grand Jury."

IN WITNESS THEREOF, as well as the aforesaid Coroner as the Jurors aforesaid, have to the inquisition put their hands and seals on the day and year aforesaid and at the place aforesaid.

"Signed: A. Magruder MacDonald, M. D. (L. S.)

"Signed: William Tancil (L. S.)

"Signed: Edward N. Riley (L. S.)

"Signed: Felix McDonald (L. S.)

"Signed: Arthur D. Boggs (L. S.)

"Signed: Murry Sinecoff (L. S.)

"Signed: Vernon Buppert (L. S.)

(Thereupon, the instant hearing was concluded.)

22 April 1958

I, George E. Stone, Official Inquest Reporter for the Office of the Coroner, District of Columbia, do hereby certify that to the best of my ability the foregoing is an official and accurate transcript of the testimony taken and proceedings had before the Coroner of the District of Columbia, Inquest No. 23-949.

/s/ George E. Stone

[Filed May 23, 1958] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

(Criminal Division)

United States of America

vs.

Adam C. Williams

:
:
:

Second Degree Murder

Criminal No. 495-58

MOTION OF DEFENDANT FOR PRE-TRIAL DISCOVERY & INSPECTION

The defendant respectfully pray that an order issue permitting pretrial discovery requested below, and to fix bond pending trial of this cause, and as ground therefor, show unto this honorable Court as follows:

1. Defendant is in process of preparation of his defense to an indictment filed in this cause accusing him of murder in the second degree;
2. Defendant is indigent and impoverished as shown by the attached affidavit and therefore without funds with which to adequately prepare for his defense;
3. The United States Attorney has relevant information in his custody and possession which is subject of discovery under Rule 16, F. R. Cr. Procedure;

Wherefore, the premises considered, defendant prays that he be allowed to proceed without prepayment of costs in this cause; that he be provided with a list of potential witnesses to be called by the government for trial; that he be provided with a copy of the transcript of proceedings held at the Coroner's Inquest at expense of the Administrative Office of the United States as authorized by 18 U.S.C., § 1915; that he be provided with a copy of defendant's statement given to officers of Metropolitan Police department; and that he be provided with all statements, memoranda, reports, or other documents of all potential government witnesses (except agents of the F. B. I.) signed or unsigned containing relevant information which may be the subject of discovery; and to produce the "brick" which the Grand Jury charges that the defendant used to strike the deceased.

/s/ EDWARD J. SKEENS

I hereby certify that I mailed a copy of this motion and attached affidavits to the U. S. Attorney on this ____ day of May, 1958.

/s/ EDWARD J. SKEENS
Attorney for Defendant

[Filed May 23, 1958]

AFFIDAVIT OF ATTORNEY FOR DEFENDANT

DISTRICT OF COLUMBIA, ss:

Edward J. Skeens, being first duly sworn upon his oath deposes and says that he is a member of the bar of this Honorable Court; that he has been retained

in this case by the defendant's mother for the sum of \$50.00; that it appears unlikely that any more of a fee will be paid to affiant since the mother is very old and unemployed; that the defendant has indicated that he is without funds and that his employer owed him no salary as of the date of his arrest; that affiant cannot effectively represent defendant unless leave is granted to proceed without prepayment of costs because it will be necessary to issue a number of subpoenas, to obtain a transcript of the Coroner's Inquest as well as a possible appeal of this cause.

/s/ EDWARD J. SKEENS

Subscribed and Sworn to before me this 22nd day of May, 1958.

My Commission Expires
February 15, 1960

/s/ Illegible.
Notary Public

[Filed July 3, 1958]

MOTION TO MODIFY SUBPOENA

Rule 17(c) of the Federal Rules of Criminal Procedure Does Not Require the Government to Disclose the Information Sought by the Defendant.

The defendant herein seeks to obtain by subpoena duces tecum, in addition to his own statement, "a list of potential witnesses to be called by the government for trial; . . . and copies of all statements, memoranda, reports concerning relevant information about any of the occurrences or available evidence in the above entitled cause." It is with reference to the latter two requests that the government moves to modify the subpoena served upon it.

Rule 17(c) of the Federal Rules of Criminal Procedure reads as follows:

"A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys."

It is submitted that this rule does not provide for a general right of discovery but only of specifically designated "books, papers, documents or other objects." The Supreme Court in interpreting the foregoing rule in the case of Bowman

Dairy Co. v. United States, 341 U.S. 214, 221 said that Rule 17(c) was not intended to broaden the discovery procedures of Rule 16 of the Federal Rules of Criminal Procedure. In fact, the Court therein spelled out the limits of discovery of defendant under the aforementioned Rule 17(c) by saying:

"In short, any document or other material admissible as evidence, obtained by the Government by solicitation or voluntarily from third persons is subject to subpoena." [Emphasis added.]

It is contended that the foregoing limits the type of materials amenable to process under Rule 17(c) to tangible property, and that "a list of potential witnesses to be called by the government for trial" is not included therein. Patently such a list would not be admissible as evidence. Moreover, Congress has seen fit to require the government to turn over to the defendant a list of its witnesses only in certain types of capital cases. Title 18, United States Code, Section 3432.

With respect to the defendant's request for production of "copies of all statements, memoranda, reports concerning relevant information about any of the occurrences or available evidence in the above entitled cause," it is submitted that this blanket demand is nothing but a "fishing expedition" and that the documents sought by the defendant are now covered in part by the provisions of the "Jencks law," Title 18, United States Code, Section 3500. Furthermore, the balance of the foregoing request by the defendant concerns itself with the "work product" of the government which the defendant is not entitled to examine or receive. Schneider v. United States, 192 F. 2d 498, 502; United States v. Iozzia, 13 F.R.D. 335, 340.

For the foregoing reasons, it is respectfully submitted that the defendant's subpoena should be modified as previously indicated.

/s/ OLIVER GASCH
United States Attorney

/s/ ALFRED L. HANTMAN
Assistant United States Attorney

Certificate of Service

I hereby certify that a copy of the foregoing was mailed to the attorney for the defendant, Edward J. Skeens, Esquire, 1500 Massachusetts Ave., N. W., Washington, D. C., this 3rd day of July, 1958.

/s/ ALFRED L. HANTMAN
Assistant United States Attorney

[Filed July 28, 1958]

* * * * *

: Criminal No. 699-58

**MOTION TO DISMISS INDICTMENT OR IN THE ALTERNATIVE
TO SUPPRESS ALL EVIDENCE OBTAINED BY THE CORONER'S INQUEST**

The defendant, Adam C. Williams, prays that an order be entered dismissing the indictment, or in the alternative, that all of the evidence and the fruits thereof obtained by the Coroner's Inquest be suppressed and excluded from the trial on said indictment and as ground therefor shows as follows:

FACTS

1. The defendant was arrested on April 20th, 1958 and charged with Homicide by Detective John W. Cannon, #2 Precinct, M. P. D. due to the death of Augustus Blenheim as a result of an altercation.
2. The defendant appeared in the U. S. Branch of the Municipal Court for the District of Columbia, Case No. U.S. 2498-58, for a preliminary hearing on Monday, April 21, 1958; the Court, having determined that defendant was indigent, appointed Edward T. Gronchi, Esq., and Harry Peikin, Esq., as his counsel for purpose of the preliminary hearing; whereupon, the Government asked and was granted a continuance in order to present the matter to the Coroner's Inquest. The preliminary hearing was continued to May 6, 1958.
3. On April 22, 1958, the next day, while defendant had been remanded to the custody of the Superintendent of the District of Columbia Jail, the defendant appeared at the D. C. Morgue, without counsel, for a Coroner's Inquest. The Coroner's jury returned a verdict that defendant was responsible for the death of Augustus Blenheim and held him for action of the Grand Jury. However, the Jury failed to make a finding that defendant was guilty of Murder or Manslaughter as required by the District of Columbia Code, § 11-1205. As a result of said verdict the Coroner committed the defendant to the custody of the Superintendent pending a Grand Jury action.
4. At the Inquest, the Coroner in his capacity as a quasi judicial officer, failed to comply with Rule 5, Federal Rules of Criminal Procedure, and the 5th and

Sixth Amendments to the Federal Constitution in that the Coroner:

- a) failed to inquire whether defendant had retained counsel, and whether such counsel had notice of the Inquest proceeding;
- b) failed to determine that defendant was indigent and unable to retain counsel;
- c) advise the defendant that he had a right to counsel throughout every stage of the Coroner's proceedings; the nature of the proceeding and its purpose;
- d) failed to advise defendant of his right to a preliminary hearing to be held prior to the Coroner's Inquest; and of his right to be released on recognizance pending further proceedings against him; and that he need not incriminate himself.

5. Defendant did not understand the proceedings against him; defendant did not know he had a right to counsel and he did not waive that right; defendant did not intelligently waive his constitutional right against self-incrimination.

6. Defendant was denied a preliminary hearing through the deliberate circumventing procedure instituted by the Assistant U. S. Attorney in continuing the matter for purposes of holding a coroner's Inquest, therefore the commitment issued on April 21, 1958 was invalid.

7. The Coroner's commitment of April 22nd, 1958 was invalid because of the violations of due process of law alleged above.

8. Defendant was illegally committed and confined in the District of Columbia Jail from the date of his arrest on April 20th, 1958 until he was indicted by the District of Columbia Grand Jury on May 12, 1958; therefor, defendant was restrained and denied his freedom and liberty without due process of law.

ARGUMENT

1. The Coroner is a quasi judicial officer acting as a committing magistrate and as such, he is subject or (sic) Rules of Criminal Procedure, the laws of the United States and the District of Columbia and the Federal Constitution; and that the foregoing facts show that the Coroner failed to comply with such laws.

2. Since the Commitments issued by the Municipal Court and the Coroner were invalid, the defendant has been restrained and deprived of his liberty without due process of law; and therefore the Court has lost all jurisdiction to proceed further against this defendant within the meaning of Johnson V. Zerbst 304 U. S. 458; 58

S. CT. 1019; 82 L. Ed. 1461; Neely v. United States 79 U. S. Appd. D.C. 177; 144 F. 2d 519; Wood v. U.S. 75 U.S. App. D.C. 274; 128 F2d 265.

3. Because of the foregoing, defendant incriminated himself before the Coroner's Inquest by testifying before the Coroner's Jury and he subjected himself to extensive cross-examination by the Assistant United States Attorney which is admissible against him at his trial of this cause.

WHEREFORE, the premises considered, the defendant should be granted a hearing to permit proof of the allegations of fact in this motion; then, upon finding such facts as alleged here, the indictment should be dismissed. If dismissal of indictment is denied, defendant, without waiving his rights for such dismissal, requests that all evidence alluded to at the Inquest of the Coroner should be suppressed as well as the testimony of the defendant.

/s/ EDWARD J. SKEENS
Attorney for Defendant

I hereby certify that a copy of the foregoing has been mailed to the United States Attorney, 3rd floor, U.S. Courthouse, Wash. 1, D.C., on the 25th day of July, 1958.

/s/ EDWARD J. SKEENS
Attorney for Defendant

[Filed January 28, 1959]

HEARING ON MOTION TO DISMISS THE INDICTMENT, ETC.

Before: Washington, D. C., August 8, 1958
11:30 a. m.

HONORABLE JOSEPH C. McGARRAGHY
United States District Judge

Appearances:

On behalf of the United States: **ALFRED HANTMAN**, Assistant
United States Attorney

On behalf of the Defendant: **EDWARD J. SKEENS, ESQ.**

P R O C E E D I N G S

DEPUTY CLERK: Adam C. Williams.

MR. HANTMAN: Before Your Honor here is the motion to dismiss the indictment or, in the alternative, to modify subpoena. May I say to Your Honor

that this defendant, since the indictment in Criminal case 495-58, which is before Your Honor at this time, has been re-indicted in Criminal No. 699-58, which case is set for trial on August 26, 1958.

When I learned of this re-indictment, Your Honor, it was my intention then to move the Court to dismiss the indictment in the earlier case, 495-58. However, the motion to modify the subpoena in that case was pending therein, counsel had in fact filed his motion to dismiss the indictment in that case and, frankly, I didn't know the proper way to proceed, whether to move to dismiss, have it dismissed and require counsel and the government both to re-file all their motions in the new case or not; consequently, I decided I would not move to dismiss but would bring those facts to Your Honor's attention before argument and if counsel and I can agree that whatever ruling is made by Your Honor in connection with pending motions, would apply in 699, at least apparently it would serve no purpose to file it there, I am willing to proceed on that basis.

THE COURT: Would they be applicable to 699?

MR. HANTMAN: The same exact thing, Your Honor, the defendant was
 3 re-indicted for the same degree of murder, second degree murder, the only difference being in the old case, 495-58, he is charged with striking the deceased with a brick, and in 699 he is charged with committing homicide by striking the deceased with his fist. Now, that is the only difference in the two cases.

I think all the arguments, I think Mr. Skeens will agree, all the arguments that he raises in 495-58 are applicable or would be, if he were required to file it in 699, and I didn't want to put him to that burden and so I didn't come in, in advance, and move to dismiss the earlier case.

THE COURT: I am thinking of it as a matter of procedure and a matter of record. I assume the case is going to trial on 699?

MR. HANTMAN: Yes, Your Honor, August 26th.

MR. SKEENS: If I may interrupt, I rarely do that but I think the clerk has solved the situation for us because he has apparently grasped the situation without consulting counsel. Both indictments were pending when I filed the present motion and the clerk very alertly scratched out the "495" and inserted "699,"

so actually my motion is filed in 699 which is the indictment and Mr. Hantman has just stated he will proceed.

THE COURT: The motion to modify subpoena is in 495.

MR. SKEENS: We can stipulate that that can apply to 699.

4 MR. HANTMAN: It is all right, I only wish to point out to Your Honor, in filing points and authorities in opposition to Mr. Skeens' motion to dismiss the indictment, my caption reads "495." I did that solely because he originally filed his motion to dismiss in that case and I was unaware of the action of the clerk.

THE COURT: I am sure I am not going to be technical, I merely want to make sure that 699-58 contains the appropriate pleadings on which the Court is ruling, because further proceedings in 699 ought to so indicate.

MR. HANTMAN: I am sure Your Honor sees the problem I had facing me.

THE COURT: Can't we find some procedural way of transferring these motions to 699?

MR. HANTMAN: Counsel has no objection whatsoever.

MR. SKEENS: I think the proper thing to do that would be to consolidate both cases and he can dismiss 495.

THE COURT: Suppose we do that, sign an order consolidating these two cases and all the motion therein and we will proceed to hear the motions.

MR. HANTMAN: Very well.

MR. SKEENS: Does Your Honor want an order to that effect or would a docket entry be sufficient?

THE COURT: The clerk will take care of it.

5 MR. SKEENS: Now, Your Honor, the defendant has filed a motion to dismiss the indictment or both indictments or, in the alternative, to suppress all evidence obtained by the Coroner's inquest, which includes his own testimony.

Essentially, this motion is pitched upon the right of counsel by an accused in pretrial criminal proceedings. I have two recent cases before me which were decided by the United States Supreme Court on June 30, 1958. They are very, very enlightening on the state of mind of the Supreme Court on this question of counsel during pretrial criminal proceedings. They do not solve the problem

or the issue which is presented by the motion here, and I will say that there is no case which I could find that exactly says I am in the right or in the wrong on this point.

THE COURT: You have argued this same question to me on another case, have you not, several months ago?

MR. SKEENS: I argued an identical motion of this type before Judge McLaughlin in the Ross case which Your Honor tried yesterday.

THE COURT: I think you also argued it to me in a case a few months ago, if I am not mistaken.

MR. SKEENS: I mentioned that by the way, I had filed a motion for pretrial discovery and I stated to Your Honor that was to enable me to file a motion to dismiss of this type and, in that sense, I had mentioned the fact I was going to file this type of motion.

6 THE COURT: Judge McLaughlin did rule on the question in the Ross case, did he not?

MR. SKEENS: Yes, which I hope to appeal also, along with the rest of the case.

The Supreme Court in rendering its decision in the case of Vincent Cicensia, Petitioner, v. R. William LaGay, Superintendent of New Jersey State Prison Farm, reported at 2 Lawyers Edition 1523, it is in 76 Supreme Court -- that case is very simple. The man was asked to appear at police headquarters, he called the lawyer, Frank Palmieri; his lawyer Frank Palmieri told him to go down to the police station and he would be down later on. When the lawyer got down there, the police had the defendant closeted upstairs and extracted a confession. Upon that confession, the lawyer, recognizing his motions were denied, entered a plea of non vult which disposed of the case.

The case came to the Supreme Court and there was a constitutional question raised whether or not this man was entitled to counsel at the pretrial stage, that is, after arrest and prior to arraignment. The Supreme Court says, on page 1527:

"The contention that petitioner had a constitutional right to confer with counsel is disposed of by Crooker v. California, 2 L. Ed. 1448, decided today."

7 I also have that case here, that is the second case I hope to discuss with Your Honor. Continuing from the Cicienia opinion, on 1527:

"There we held that California's failure to honor Crooker's request during a period of police interrogation to consult with a lawyer, as yet unretained, did not violate the Fourteenth Amendment. Because the present case, in which petitioner was denied an opportunity to confer with the lawyer whom he had already retained, sharply points up the constitutional issue involved, some additional observations are in order.

"We share the strong distaste expressed by the two lower courts over the episode disclosed by this record." Citing Supreme Court case. "Were this a federal prosecution we would have little difficulty in dealing with what occurred under our general supervisory power over the administration of justice in the federal courts. See *McNabb v. United States*, ..."

Then let us turn to the Crooker case which the Court has just quoted. That case involved a 31-year-old college graduate with law school training, who was arrested for murder and was told that he could obtain counsel but then later on his request was denied. During interrogation, he confessed. That is also a state proceeding. Of course, I just told you what the Court held in that case,

8 Your Honor, so I need not repeat that. But then let's turn to the thinking of the Court; there is a majority and dissenting opinion, which was a five to four decision, Mr. Justice Douglas, The Chief Justice, Mr. Justice Black and Mr. Justice Brennan being in the dissenting portion of the opinion.

From the majority, on page 1454 in 2 Lawyers Edition, the Court says:

"The right of an accused to counsel for his defense, though not firmly fixed in our common-law heritage, is of significant importance to the preservation of liberty in this country." Citing *Cooley*. "That right, secured in state prosecutions by the Fourteenth Amendment guaranty of due process, includes not only the right to have an attorney appointed by the State in certain cases, but also the right of an accused to 'a fair opportunity to secure counsel of his own choice.'" Citing *Powell v. Alabama*, and *Changler v. Fretag*.

"Under these principles, state refusal of a request to engage counsel violates due process not only if the accused is deprived of counsel at trial

on the merits, *Chandler v. Fretag*, supra, but also if he is deprived of counsel for any part of the pretrial proceedings, provided that he is so prejudiced thereby as to infect his subsequent trial with an absence of 'that fundamental fairness essential to the very concept of justice.'"

This is what the majority says and they say there was no fundamental unfairness, that is why five of them voted to sustain the conviction.

However, let's see what four other Justices' state of mind is on this position. This dissent was written by Mr. Justice Douglas and concurred in by The Chief Justice and Mr. Justice Black and Mr. Justice Brennan. On 1457, talking about the officers arresting and interrogating him, the Court says:

"For what takes place in the secret confines of the police station may be more critical than what takes place at the trial."

Then quoting from a Note on Criminal Procedure, *Right to Counsel*:

"If at any time, from the time of his arrest to final determination of his guilt or innocence, an accused really needs the help of an attorney, it is in the pretrial period Indeed, the pre-trial period is so full of hazards for the accused that, if unaided by competent legal advice, he may lose any legitimate defense he may have long before he is arraigned and put on trial."

Now, I think Your Honor recalls being at the Judicial Conference held prior to this decision and that is exactly what I told the Judicial Conference before this opinion was written.

THE COURT: I remember your remarks.

MR. SKEENS: It was about this case that I was talking about, this Adam C. Williams case. Continuing further, they say:

"Or as stated by a Committee headed by Prof. Zechariah Chafee, 'A person accused of crime needs a lawyer right after his arrest probably more than at any other time.'

"The Court speaks of the education of this petitioner and his ability to take care of himself." College, law student. "In an opinion written by Mr. Justice Sutherland the Court said, 'Even the intelligent and educated layman has small and sometimes no skill in the science of law He requires

the guiding hand of counsel at every step in the proceedings against him. '"
 Citing *Powell v. Alabama*. 'Mr. Justice Sutherland spoke of the trial itself.
 But what is true of the trial is true of the preparation for trial and of the
 11 period commencing with the arrest of the accused. No matter how well edu-
 cated and how well-trained in the law an accused may be he is sorely in need
 of legal advice once he is arrested for an offense that may exact his life.
 The innocent as well as the guilty may be caught in a web of circumstantial
 evidence that is difficult to break. A man may be guilty of indiscretions but
 not of the crime. He may be implicated by ambiguous circumstances diffi-
 cult to explain away. He desperately needs a lawyer to help extricate him
 if he's innocent. He has the right to receive the benefit of the advice of his
 own counsel at the trial, as we held in *Chandler v. Fretag*. That same right
 should extend to the pretrial stage.

"The need of a lawyer in the pretrial investigation, if the constitutional
 rights of the accused are to be preserved, was stated by Mr. Justice Black
 in *In re Groban*," giving the citation. I will read this paragraph and that will
 be all from the Supreme Court:

"The witness has no effective way to challenge his interrogator's testimony
 as to what was said and done at the secret inquisition. "

And that is what the Grand Jury or the inquest is, if he doesn't have a lawyer.

12 "The officer's version frequently may reflect an inaccurate understanding
 of an accused's statement or, on occasion, may be deliberately distorted
 or falsified. While the accused may protest against these misrepresentations,
 his protestations will normally be in vain. This is particularly true when
 the officer is accompanied by several of his assistants and they all vouch
 for his story. But when the public, or even the suspect's counsel, is present
 the hazards to the suspect from the officer's misunderstanding or twisting of
 his statements or conduct are greatly reduced.

"The presence of legal counsel or any person who is not an executive
 officer bent on enforcing the law provides still another protection to the wit-
 ness. Behind closed doors he can be coerced, tricked or confused by officers

into making statements which may be untrue or may hide the truth by creating misleading impressions. While the witness is in the custody of the interrogators, as a practical matter, he is subject to their uncontrolled will Nothing would be better calculated to prevent misuse of official power in dealing with a witness or suspect than the scrutiny of his lawyer or friends or even of disinterested bystanders."

"The demands of our civilization expressed in the Due Process Clause require that the accused who wants a counsel should have one at any time after the moment of arrest."

13 THE COURT: You claim he should have had counsel at the Coroner's inquest in this case, is that right?

MR. SKEENS: No request was made.

THE COURT: I am trying to find out what your point is with respect to this case. In what respect was this defendant prejudiced by failure to appoint counsel for him?

MR. SKEENS: All right. He was prejudiced in three ways. He has not had an opportunity of a lawyer to prepare the proceedings for the Coroner. He was committed by the Coroner until he was indicted and if that commitment is based on an illegal proceeding, his commitment was illegal.

THE COURT: Even if it was, if he was subsequently indicted, doesn't that dispose of the matter?

MR. SKEENS: Does that mean a person has a right to be detained illegally for weeks and --

THE COURT: The only question before me is whether he is properly tried now.

MR. SKEENS: Yes, but if a man's constitutional right, if he has been deprived of it, this court loses jurisdiction to continue against him at the trial, that is my point.

THE COURT: Did the defendant testify before the Coroner's inquest?

MR. SKEENS: Yes, sir. We have the inquest, we will come into that in a minute. But let's see what happened here. All I am saying at this point, I should
14 have the opportunity to bring these witnesses here and prove my allegations,

which I will prove to be as follows: That the District Attorney in this case and in all cases deliberately gets a continuance, when we appear in the United States branch of the case, for the purpose of going to the Coroner. The Court appoints a lawyer at the preliminary hearing which is continued and then, without the knowledge of the lawyer or anybody else, it goes to the Coroner and there there is a hearing held and the man doesn't have his lawyer or the advice of counsel.

Now, just to point that up, look what this defendant told the Coroner on page 28--

THE COURT: Will you excuse me a moment?

(The Court conferred with other counsel at the bench.)

MR. SKEENS: Mr. Hantman is going to tell Your Honor that this defendant intelligently waived his constitutional right to counsel at the Coroner's inquest, but here is what happened on page 28:

"CORONER: And you don't want to wait and talk to a lawyer of your own choice or have the Court appoint a lawyer you may talk to before you make a statement?"

"ANSWER: Well, sir, the Court appointed me a lawyer."

That is with reference to the preliminary hearing:

"He hasn't been down here, so I might as well take the stand for myself."

15 He feels he has been abandoned and that is what happened here. Now, there is the abuse. The government gets a continuance, they run down to the Coroner with it, and then the hearing is held there and the Coroner doesn't say anything when the case starts about: Do you have a lawyer, do you want a lawyer, do you want me to continue this hearing until you get a lawyer, do you have any money, do you want me to get the District Court to appoint a lawyer for you to come down to this inquest so they can prepare, interrogate the doctors and witnesses. No. Here is what he told him on page 2:

"All right, if you have any questions you wish to ask of the witnesses as they testify, we will give you that chance." -- the defendant. "You don't tell them anything, you ask the witness what you want to know, don't tell the witness anything. If, later on, you want to talk to the jury, I will tell you how to do that."

The Coroner becomes his defense lawyer, as I showed Your Honor on page 2 of the transcript.

Now, what has happened? The preliminary hearing is continued, the Coroner's jury holds him for Grand Jury action, a commitment goes to the jail and the defendant is held on that Coroner's commitment. The government sometimes
 16 dismisses immediately, which they did in the Ross case, they didn't even wait for the indictment. In this case, they waited until the man was indicted, then they dismissed, after getting two continuances in Municipal Court for the preliminary hearing, and they waited until the Grand Jury indicted here.

Once the indictment is made, they say, well, he is being legally held now, we don't care what happened before that because now we have the indictment. But that man's rights have been denied, he has been denied counsel and illegally detained before indictment.

What is his remedy? This Court has jurisdiction to proceed or it doesn't, and I think that is the crucial question raised by this motion to dismiss, and Johnson v. Zerbst tells you when there is a fundamental unfairness and deprivation of rights, the Court loses at the trial level, it cannot proceed further against him. How are we going to solve the abuses against him going on in the preliminary hearing and before the Coroner, which are always homicide cases, a very serious thing indeed. How are we going to solve the problem?

The only way we can do it is to make them give that defendant at this pretrial a chance to get the lawyer, if he has the money; if he doesn't, if he is indigent, to
 17 certify to the District Court to appoint him a lawyer and let him have a chance to go out and investigate and properly prepare the case down there, because as this Supreme Court case says, he is shattered at the trial if he doesn't have this pretrial procedure and preparation.

Now, the Court appointed two lawyers for this man in the preliminary hearing. They go in. The government says we are not ready, we are going to present it to the Coroner, we want a continuance. So what do the lawyers do? They say, well, what are we going to do? The continuance is granted, they don't talk to the defendant, don't tell him anything, he goes to the Coroner, he doesn't know what his rights are. And that is the case in all homicide cases in this District and it has been going on for twenty-five years.

Now, what kind of law do we have so far here, concerning the Coroner? Unfortunately, there is only one case in our Court of Appeals that discusses the Coroner, that is Neely v. United States, and that case specifically says that the Coroner is a quasi-judicial officer, a committing magistrate.

Now, if he is a committing magistrate, why doesn't he have the same obligations that are imposed upon him by the Constitution, the Federal Rules of Criminal Procedure, the District Code and the United States Code? It is unfortunate that he is a doctor, but that is not the defendant's fault; maybe he should be a lawyer and a doctor. But that is not our problem.

18 He is down there and he is telling this defendant everything that he is going to do there. He is his lawyer and he doesn't have any legal training, either.

Now, Neely v. United States holds that -- if Your Honor will read that, it is a short opinion -- the contention there was, they tried to get the testimony of the defendant suppressed at the trial, they didn't want to use his statement before the Coroner here at the District Court and the contention on appeal was that the Coroner is not a committing magistrate and that this was a confession extracted illegally between arrest and arraignment and therefore should be excluded under the McNabb rule. That was the theory in the Neely case and I am exactly in the opposite position.

I say that he is a committing magistrate, he is a quasi-judicial officer and, as such, he has the same duties and obligations as any other committing magistrate.

Now, that is what has been the harm and the prejudice here and I announce to Your Honor right now that this man's defense at the trial, if Your Honor rules that there is one, will be self-defense and justifiable homicide, using reasonable force to recover money taken from him by trick, in a dice game. Those were his defenses.

19 Now, he has not had the opportunity to prepare at a pretrial stage, a Coroner's inquest, where substantial witnesses appear, many of them, six or seven of them, doctors, policemen, the Coroner, and eye witnesses. Now, that is one point.

The second point is the Coroner as a committing magistrate issues a commitment and it is there in the jail, as I have shown in the Ross case. He is there

on that commitment, on that commitment issued by the committing officer and that is why the jail can hold that man until he is indicted. There has to be some way to hold a man before he is indicted, a legal commitment, and if the proceeding is illegal, the commitment is illegal also; just like when an arrest is illegal, then the subsequent search is illegal. That is my analogy and that is my contention.

Then the third abuse here is the abuse of the prosecuting attorney who says, we will continue this preliminary hearing because we want to get the thing before the Coroner.

Mr. Hantman is going to get up here and tell Your Honor this man has no constitutional right to a preliminary hearing. That is true, that was decided in the Wood case but the Wood case also held if the government chooses that mode to issue a commitment to hold this man pending further proceedings, he does have the constitutional right to a lawyer at that preliminary hearing, if they institute that proceeding, and that is exactly what the Wood case held and that case has
20 never been overruled. It is still the law in our District of Columbia here, it talks about the very same things the Supreme Court has been telling us in these two cases.

This is a very serious and important problem and question and I say it is so serious, under Johnson v. Zerbst, a Supreme Court decision, he has been so far deprived of his rights and his case has been so far shattered now, that we can never repair it at the trial and this man may well be convicted of second degree murder; whereas he could probably have developed a very good defense of self-defense or justifiable homicide; because this man has now testified at the inquest and he admitted that he picked up a brick but he dropped it on the way as he was running after the deceased. That the deceased had his hand in his shirt and said words to the effect, "I am going to blow you out," or "I am going to kill you," or something to that effect and he was there with three of his friends.

Your Honor knows, there are two indictments here, one showing death by a brick and the other death by a fist -- they, themselves, didn't know what the truth was until after the indictment was returned. Even the Coroner's inquest couldn't tell them exactly how they were going to charge this man.

So I show Your Honor where the prejudice is, this is the case, this one points it up even more so than the Ross case, because in the Ross case he did not testify
 21 at the Coroner's inquest and he did not testify at the trial.

So I point out to Your Honor that this is a question, this is an important one, and if Your Honor finds after a hearing that what I am saying now is true, I think that that shows this fundamental fairness not only under the federal guarantees of the Fifth and Sixth Amendments but even under the Fourteenth, which the majority is talking about in that Cicienia opinion, he was denied a fundamental fairness and I think the indictment should be dismissed.

MR. HANTMAN: If Your Honor please, Mr. Skeens makes what appears to be a convincing argument, at least on the face of it, but I think Mr. Skeens' concept is forward looking and far beyond our judicial process at this time.

I think it is admirable, if we did have a system that gave a man legal protection from the very moment of his arrest; however, this is something that the individual has to take care of by himself, as far as I know.

The only requisite, the only duty incumbent upon the Court is to see that such an individual is represented by counsel, if he can't afford one, at the time he is brought before the Court under indictment or on information, as the case may be.
 22 This man has no constitutional right to legal representation at a Coroner's inquest. The right to assistance of counsel only obtains when a man is put to his defense.

Now, I will concede that this word "defense" refers from the moment he is indicted or faces the Court with an information. This man was taken down to the Coroner's inquest subsequent to his being brought before Municipal Court where the Court did appoint two lawyers for him. The Coroner's jury decided that this man was responsible for the death of the deceased and determined that he should be held for the action of the Grand Jury.

Now, unless and until this defendant is indicted by a Grand Jury, subsequent to the action of the Coroner's jury, he is not entitled to counsel to assist in his defense. But above and beyond the constitutional right to the assistance of counsel, if Your Honor please, this defendant was given every opportunity to avail himself

of a right of counsel at the Coroner's inquest, contrary to the position stated to Your Honor by Mr. Skeens.

Now, Mr. Skeens read a very short paragraph from the Coroner's transcript to Your Honor, I may say, out of context, if you consider the transcript in its entirety. May I beg the indulgence of the Court a minute to go back a little earlier than that portion read to Your Honor by Mr. Skeens, and after the witnesses have testified before the Coroner's inquest, including the Deputy Coroner who performed the autopsy, the Coroner made this statement -- I read from page 26,

23 Your Honor please, of the transcript involving the death of the deceased Blandheim, (sic) dated April 22, 1958. I ask Your Honor to listen to what the Coroner says to this defendant at that hearing:

"All right. Now, I told you about making a statement. We can't make you testify as these other witnesses have, but you have the privilege of standing on your constitutional rights, not saying anything at this time. If you wish to waive your rights and tell the jury what happened, you may do so. But you have to do that of your own free will. Do you understand?"

The defendant says, "Yes." Then the Coroner said:

"It is my duty to warn you that whatever you say may be used for or against you at this hearing, any other hearings or trials of your case in court, if such are deemed necessary. Do you understand?"

And the defendant nodded his head affirmatively. The Coroner then said, and I am reading on page 27:

"Do you wish to make a statement or not?" The defendant again nodded his head affirmatively.

The Coroner at this point said:

24 "You don't want to wait and talk to a lawyer of your own choice or ask the Court to appoint a lawyer to represent you. You don't want to do anything. You want to make a statement to the jury. All right, come up."

The defendant then approached the witness chair, the record reflects, Your Honor please, and the Coroner then said:

"You are not sworn. You are making a voluntary statement.

"Q. Now, what is your full name? A. Adam Clay Williams."

Then the Coroner, still not satisfied, if Your Honor please, put this question to the defendant:

25 "Now, Mr. Williams, I am telling you that I can't make you testify in this case like the other witnesses. Do you understand? And you don't have to testify in this case which involves your liberty, and so forth. You are given certain privileges that you can stand on your constitutional rights and remain mute. That means not to say anything. Now, if you wish to waive those rights, of course, I can't stop you from talking, if you make up your mind you want to talk, but it is also my duty to warn you that whatever you say may be used for or against you at this hearing or any other hearings or trials of your case in court. Now, don't shake your head, speak. A. Yes, sir.

"Q. Do you understand what I said? A. Yes, sir.

"Q. And you don't want to wait and talk to a lawyer of your own choice or have the Court appoint a lawyer you may talk to before you make a statement? A. Well, the Court appointed me a lawyer. He hasn't been down here, so I may as well take the stand for myself.

"Q. You still want to talk? A. Yes, sir.

"Q. You understand perfectly what I have said to you? A. Yes, sir.

"Q. Well, you go ahead and tell the jury anything you wish."

Now, I submit to Your Honor, can anything be clearer than that statement given by the Coroner to this defendant at the time he appeared at this Coroner's inquest? I further submit to Your Honor that there isn't any doubt in my mind and I feel certain that there isn't any doubt in Your Honor's mind that this defendant understood everything the Coroner said to him.

26 In any event, if Your Honor please, the case of Neely v. United States, cited by Mr. Skeens, says in part, and that is 144 F.2d 519:

"A coroner may take testimony of probable defendants if it is given voluntarily after advice as to their rights and, in so doing, coroner does not act as a prosecuting officer, but sits in a quasi-judicial capacity."

I submit to Your Honor the Coroner in this case carried out his duties clearly

in accordance with the statutes that spell out his duties and functions, clearly in accordance with the cases that have been decided under those statutes.

I say to Your Honor that the defendant has failed to allege sufficient grounds to warrant this Court in dismissing this indictment or to suppress any evidence obtained at the Coroner's inquest. Further, the same argument made by Mr. Skeens in this case, I believe was raised by him in the case of Clarence T. Ross, which was just heard by Your Honor, Criminal 368-58. I don't know whether Your Honor ruled on it or not, or some other Judge.

THE COURT: I think not, I think it was ruled on by some other Judge.

MR. HANTMAN: Well, the fact remains the very same argument was made in that case and heard by some Judge of this court and the record reflects that
27 Judge denied a similar motion. I suggest to Your Honor that the same action ought to be undertaken in this case and the grounds urged by Mr. Skeens are insufficient and his motion to dismiss the indictment or suppress all evidence should be denied.

MR. SKEENS: I just want to say two things further, I am not going to repeat or rehash anything that has already been said. Mr. Hantman's opposition seems to be strictly according to what happened before the Coroner. But let's take the Crooker case that went to the Supreme Court, that is the 31-year-old college graduate with law training, and put him in the place of the defendant down there, just as he in this case was told by the police anything you tell us in this confession will be used against you, and still the Supreme Court has said what I read to Your Honor.

Now, here is what I propose and I request Your Honor to do, rather than deciding this motion today, to afford me an opportunity to file a motion in the Ross case to vacate the jury's verdict, to dismiss the indictment and to suppress those before the Coroner who testified here before the Ross jury, or in the alternative to grant a new trial, and then Your Honor could consider that motion together with this motion and then make your decision jointly, because I believe that the issues are the same there, and there Your Honor will have the benefit, if Your Honor would be so inclined, to order a transcript of the hearing that was

28 held before Judge McLaughlin. There I had the attorney for Ross, I had the Coroner here and he testified what he did and what he said and everyone else involved, and then after Your Honor would sit down and look at the record and study it, then Your Honor can make your decision in the Ross case and in the light of the allegations here, it could be equally applicable to Williams.

THE COURT: I don't see any occasion for doing that. Let me ask you, at some stage earlier today, you indicated that you wanted an opportunity to take testimony in this case. What do you want to do? What do you want to prove?

MR. SKEENS: I want to do the same thing I did in the Ross case, to bring in the lawyers, the prosecuting attorney, the clerk of the Municipal Court, the Coroner, the records clerk to bring up the commitment, and to prove all the allegations, factual allegations.

THE COURT: Would you prove anything more than you have stated this morning? I mean, you have stated what you expect to prove, namely, that there was a preliminary hearing which was continued and at that preliminary hearing the Court appointed counsel.

MR. SKEENS: And I also have the facts here.

THE COURT: And you also say there was a continuance of the preliminary hearing, whereupon there was a Coroner's inquest at which counsel was not present and then you have read from the pertinent parts of the proceeding before
29 the Coroner's inquest. That is all in the record here, in your statement. Would you prove anything more than you have stated this morning?

MR. SKEENS: Plus the factual allegations in my factual statement in the motion, itself.

THE COURT: Well, I just want to know if there is any dispute about the facts in the case.

MR. HANTMAN: There are none that I know of, Your Honor please. With respect to the allegations that are of record in this case, the government gladly stipulates those; with the fact the preliminary hearing was held, counsel was appointed and there was no counsel before the Coroner's inquest, and what was testified to at the Coroner's inquest, we have no argument about that, the Government

gladly concedes that. With respect to any statements counsel makes concerning it, of course that is a matter of argument; we have advanced our position to Your Honor on that.

THE COURT: I understand. I see no reason to consolidate this with the Ross case or continue this for that purpose; nor do I see any occasion for taking testimony in this case, since I gather there is no dispute as to the essential facts
30 in the case. There may be considerable dispute as to the conclusions to be drawn or the result of those facts.

MR. HANTMAN: Yes. I think the only dispute Mr. Skeens and I have is as to the law or the effect of the law; we have no factual dispute that I know of.

THE COURT: I am of the opinion there is no showing of prejudice in this case to the defendant and that none of his constitutional rights have been violated, and I will deny the motion to dismiss or to suppress.

MR. HANTMAN: There is still pending the government's motion to modify a subpoena which was served on the government in connection with this case. Earlier this month, the matter came before Judge McLaughlin on the government's motion to modify subpoena served upon the government in connection with this case, wherein the defendant through counsel asked the government to produce certain documents, including the statements of the defendant, the statements of all the potential witnesses in this case, a list of the potential witnesses, and I believe he asked permission to see the brick that was purportedly part of this case. I told Mr. Skeens, when the matter was before Judge McLaughlin, that the government did not desire to contest his right to have the statement of the defendant; we never have contested it, we don't contest it now. But we seriously question this defendant's right to have this Court require the government to give
31 him a list of any and all statements and memoranda made by all potential witnesses in this case, a list of the witnesses, with respect to the brick I think I announced before Judge McLaughlin --

THE COURT: You don't have the brick, do you?

MR. HANTMAN: That we didn't have it, we didn't know anything about it or, that is, we couldn't produce it, wherefore the subsequent indictment, as Your Honor sees.

Now , at the time, and Mr. Skeens will correct me if I am in error, I am certain, Mr. Skeens cited the Clarence T. Ross case to Your Honor, 368-58, which I at that time was unfamiliar with, in which Judge Tamm had apparently signed an order giving to Mr. Skeens everything he was asking for in this case, and Judge McLaughlin turned to me and said, "Well, what about it?" And I said, "I don't know, but even if it is true and I am assuming it is true, it is not binding on Your Honor" and consequently I feel it is bad law and bad precedent for this Court to require the government to turn over the items requested by him, to which the government was raising objection. He continued the matter, if Your Honor please, giving the government leave to examine the file in the Ross case and to talk to counsel. I have done that. I still stand on my motion to modify the subpoena.

I have conferred with Mr. Tom O'Malley, who represented the government in the Ross case, and he advised me that Judge Tamm did in fact sign the order
 32 as requested by Mr. Skeens. That was because Mr. O'Malley didn't object, didn't even file an opposition. Now, it was Mr. O'Malley's view that, because of the facts in that case, he didn't have any objection.

Your Honor please, I feel that is a very horrible precedent for this court or any court to follow, to require the government to give a list of potential witnesses or all statement, memoranda, that were gotten together and are in the government's file at this time.

I cited to Judge McLaughlin, as I urged upon Your Honor, that the Jencks law even prohibits it.

THE COURT: Did Judge McLaughlin rule on the matter?

MR. HANTMAN: No, Your Honor, he deferred any action and that is why it is before Your Honor today and I say to Your Honor that the government quite willingly will give Mr. Skeens a statement of this defendant, but we urge upon Your Honor to deny or to modify the subpoena in so far as it requests any other data.

THE COURT: Didn't I pass on this same question earlier in this case?

MR. SKEENS: That is what I was trying to tell Your Honor.

THE COURT: Because I have a distinct recollection that when the matter

came before me, Mr. Skeens even told me that Judge Tamm had made a similar ruling in the Ross case, and you had the proposed order which you were going to have the Judge sign and he hadn't signed it. I did not follow Judge Tamm.

MR. HANTMAN: May I say this to Your Honor. When the matter was before Your Honor, it was under Rule 16 of the Federal Rules of Criminal Procedure. Mr. Skeens had filed a motion which was not the proper method of proceeding.

THE COURT: That is correct.

MR. HANTMAN: Then he had subsequently served a subpoena on the government

THE COURT: Do you want to be heard?

MR. SKEENS: Yes, sir. Now, on May 29, I argued before Your Honor a motion for pretrial relief which was identical to the one in the Ross case and I urged Your Honor to grant the same order Judge Tamm entered. Mr. Hantman got up and said I shouldn't have the Coroner's transcript because it is in the clerk's office.

THE COURT: You finally got it?

MR. SKEENS: Yes. That part was changed. Your Honor denied the rest of the motion and I believe it was denied principally because Mr. Hantman got up and said this is not the proper procedure, he is trying to get by motion what he
34 should get by subpoena. Well, now I am here trying to get it by subpoena and he is still here objecting, now saying it is improper and a horrible precedent. But we are talking about a subpoena now and not a motion.

One further thing in reference to Mr. Hantman, in so far as a list of these witnesses, I already have the names of eleven witnesses (reading the names).

THE COURT: You probably have all the government has.

MR. SKEENS: I got those from the witnesses who testified at the Coroner's and the witnesses named in the Municipal Court preliminary proceeding, where they are required to name the list of their witnesses. So I don't see how the government can be prejudiced by giving me their names and addresses and any possible statements they may have, especially in the light they have testified before the Coroner, to give me an opportunity to compare them. I don't see how he can be hurt, either way.

THE COURT: I will grant the motion to modify the subpoena with the exception of that dealing with the statement of the defendant. Anything further, gentlemen?

(There being nothing further, the foregoing proceedings were concluded.)

* * * * *

[Filed January 28, 1959]

Washington, D. C., August 26, 1958
10:16 a. m.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

Before:

HONORABLE BURNITA SHELTON MATTHEWS,
United States District Judge

Appearances:

On behalf of the United States: JOSEPH M. HANNON, ESQ.
Assistant United States Attorney,

On behalf of the Defendant: EDWARD J. SKEENS, ESQ.

* * * * *

13

AARON F. RODGERS, SWORN

DIRECT EXAMINATION BY MR. HANNON

Q. Mr. Rodgers, you will keep you voice up, if you will please, and we can all hear you. Tell us your name. A. Aaron Francis Rodgers.

Q. And your first name is spelled A-a-r-o-n, is that correct? A. Yes, it is.

Q. And you last name is R-o-d-g-e-r-s? A. Yes, sir.

Q. Mr. Rodgers, where do you live? A. At the present, 1711 Vermont Avenue.

Q. Northwest, here in the District of Columbia, is that correct? A. Yes, sir.

14 Q. Mr. Rodgers, do you know the defendant in this case, Adam C. Williams, who sits here at counsel table? A. Not personal.

Q. Have you seen him prior to this time? A. I think once.

Q. When, sir, was the first time that you saw him? A. Well, I right off-hand, I can't say.

Q. Let me do this, sir. You know Christine Jackson? A. Yes, I do.

Q. Does she live at 1711 Vermont Avenue, Northwest, here in the District of Columbia? A. Yes, she do.

Q. On the early morning hours of April 19, 1958, were you present in her apartment? A. Yes, I was.

Q. And was there a party there at the time, sir? A. Yes, sir.

Q. Now, was the defendant Adam C. Williams at the apartment at that time?

A. Yes, sir, he was.

Q. And had you seen him prior to that time ever? A. I said once, I think.

Q. Mr. Rodgers, do you know Augustus Blanheim? A. Yes, sir.

15 Q. How long have you known him? A. Approximately eighteen or twenty years.

Q. And he is the deceased in this case, is that correct? A. Yes, sir.

Q. Was he at Christine Jackson's apartment at this time with you? A. Yes, sir. Him and I went there together.

Q. What time did you and Augustus Blanheim get there? A. I guess about 11:30. Maybe twelve o'clock.

Q. Twelve o'clock midnight, is that correct? A. Yes, sir.

Q. After you got there what did you do? A. Well, we started playing crap. Rolling dice, in other words.

Q. Could you tell us, sir, who was in the crap game? A. Well, defendant--

Q. When you say the "defendant," you mean Williams? A. Mr. Williams, yes, sir. And Blanheim and a fellow named Alston and myself. I think that was about all.

Q. Did you participate in the game, sir? A. I made a couple of bets, yes.

Q. Can you tell us whether you won or lost? A. I lost.

Q. How many times did you handle the dice? A. I never handled the dice.

16 Q. You just made side bets, is that correct? A. Yes, sir.

Q. Do you know who won during the course of the crap game? A. Well, Alston won.

Q. Did anybody else win, do you know? A. Not that I know of.

Q. How long did the dice game last, sir? A. I guess about half an hour; maybe forty-five minutes.

Q. And there came a time then that it broke up? A. Yes, sir.

Q. When it broke up where did the participants of the crap game go? A.

Well, everybody started home.

Q. And did they leave Christine Jackson's apartment? A. Yes, sir.

Q. At the time that the crap game broke up was anything said by anybody about the game? A. Well, Mr. Williams was demanding money back during the time the crap game broke up.

Q. From whom was he demanding the money? A. He was demanding the money from Alston and Blanheim.

Q. And Blanheim? A. Yes, sir.

Q. Had Blanheim won at all, sir, to your knowledge? A. He hadn't won anything because he was broke himself.

17 Q. Blanheim was broke? A. Yes, sir.

Q. Now, when Williams demanded his money back from Alston what did Alston say? A. Well, I can't -- the exact words I can't think of them right now. But it was just an argument between the three of them, backwards and forwards.

Q. Did Williams say why he wanted his money back? A. He said that Blanheim had crooked dice on him

Q. What, if anything, did Blanheim say about it? A. Blanheim told him if he had crooked dice he would have won some money.

Q. And Blanheim, as you say, did not win, is that correct? A. Yes, sir.

Q. Was there anything else said? A. Well, that is when Mr. Williams say "If somebody don't give me my money back, I'm going to blow somebody away."

THE COURT: Going to do what?

THE WITNESS: Blow somebody away, or something.

Q. (By Mr. Hannon) Where were you and the others when Williams said that if somebody didn't give him back his money he was going to blow somebody away? A. Well, we was all in the room getting ready to go outside.

18 Q. And then did you leave? A. Yes, we all went outside to get in the car to go home.

Q. What happened after you got outside the house? A. That is when Williams come outside and kept demanding his money back.

Q. And was he still demanding it from Alston? A. Well, it didn't seem like he was talking to nobody individual, just --

Q. What happened then, Mr. Rodgers? A. Well, we walked to the corner to get into the car and that is when he told Alston that he wasn't going to get in the car unless he get his money back.

Q. Williams said this to Alston? A. Yes, sir.

Q. Was Blenheim with you all this time? A. Yes, sir.

Q. Who was driving the car? A. Young.

Q. Thomas Young? A. Yes.

Q. When Williams said to Alston that he wasn't going to get into the car unless he, Williams, got his money back, what happened then, sir? A. Well, one of the girls pushed Alston into the car and Williams jumped over the fence and when he jumped over the fence, well, three of us, three or four of us walked to
19 the corner and Alston and Young drove off in the car.

Q. When Williams went over the fence, can you tell us what, if anything, he did? A. Well, Blenheim went across the street and it looked like he picked up a brick or something, so that is when everybody got out of the way.

Q. Who picked up the brick? A. Mr. Williams.

Q. Did you see him pick up a brick? A. No. I seen him fumbling around the ground. I didn't actually see him pick up a brick.

Q. After he fumbled around on the ground did he come back over the fence? A. Yes.

Q. When he came back over the fence were there any words between him and Blenheim at that time? A. No, they didn't exchange any words. He said, "Well, I am going to get one of you," like that. When he come back over the fence everybody got out of the way and he started chasing Blenheim up the street.

Q. You say he started chasing him. Did Blenheim run away? A. Yes, sir.

20 Q. In which direction did Blenheim run? A. Blenheim run--he ran, he ran east--west, on R Street. Towards Twelfth.

Q. Before he started running where was it? Where is the location of the area that Williams went over the fence? Where is that place located, as best you can remember? A. Eleventh and R. Street, Northwest.

Q. And then when he came back over the fence, now, sir, Blenheim started

running? A. Yes, sir.

Q. And he ran which way on R Street? A. He ran west on R Street.

Q. When Blanheim took off what, if anything, did Williams do? A. Well, Williams taken off behind him.

Q. Chasing him, sir? A. Yes, sir.

Q. Were you able to see where they went? A. No, I wasn't.

Q. Did there come a time that you again saw Blanheim? A. Yes, after he chased up him the street and went around the corner.

Q. What corner did they go around? A. They turned a corner. There is a large intersection there, Vermont Avenue and Twelfth Street, R Street all together. And as they went around the corner we turned around and went in the same direction they did.

21 Q. Forgive me, Mr. Rodgers. But you sighted Williams and Blanheim as they ran around the corner; is that right? A. Yes, sir.

Q. Would you tell me when you next saw Blanheim. A. After we walked to the corner of Twelfth and R. That is when we seen Blanheim laying in the street.

Q. Where was he lying? A. He was lying on the sidewalk in fact.

Q. How was he lying? A. Right offhand, I can't say.

Q. You recall whether he was on his stomach or his back or side? A. I think he was laying on his back. I am not positive. I can't say for sure.

Q. Will you describe his condition to us at the time. A. Well, let me see-- Gertrude and Melvin Rush and myself picked him up. And I tried to call him, to make sense to him. So he didn't say anything. So Melvin said he got a bump on the back of his head.

Q. Did you put him in the car at that time? A. Yes, sir.

Q. Mr. Rodgers, may I ask you this: After Blanheim and Williams went around the corner did you see Williams again? A. Yes, sir, I seen him when he come back.

22 Q. Which direction did he come from when you saw him again? A. Well, I can't say which direction because when we go to the corner, we all got to the corner at the same time. Which direction he come from I can't say, because we all got to the corner at the same time.

Q. Is it that you met him at the corner? A. Yes, sir.

Q. When you met him at the corner did you say anything to him or did he say anything to you? A. I asked him, I say, "Did you hurt the man?" He said, "Yes, I hit him with my fist." I said, "You didn't hit him with no brick or nothing, did you?" He said, "No. I hit him with my fist."

Q. It was after that you went down and picked up Blenheim and put him in the automobile, is that correct? A. Yes, I did.

Q. Was it this Thomas Young's car you put him in? A. Yes, sir.

Q. This was the same automobile that you told us Marvin Alston had driven away in just a few minutes before? A. That is right.

23 Q. When you picked Blenheim up, did you take him somewhere? A. We put him in the automobile and they taken him to the hospital.

Q. What hospital did you take him to? A. Freedmen's.

Q. And what time did you get to Freedmen's Hospital, do you recall? A. Well, the time I can't recall. I guess the whole thing lasted about a half an hour. I could say about one or two o'clock.

Q. Did he get into the hospital, Freedmen's Hospital? A. Yes, he did.

Q. And you went in with him? A. That is right.

Q. Did he receive any treatment in Freedmen's Hospital? A. The nurse put a patch on his head.

Q. And then what happened? A. Then he told Alston to take him home.

Q. And did you take Blenheim home at that time? A. Yes, I did.

Q. Where did you take him to? Where is his house located? A. 1012 Fourth Street, Northwest.

Q. Was his wife there when you got home? A. Well, I didn't go with them home.

* * * * *

24 CROSS EXAMINATION BY MR. SKEENS:

* * * * *

28 Q. You have known him since '41. You said twenty years. That would make it '38, wouldn't it? A. Well, ever since '41, I would say. Just before I went in the service.

MR. SKEENS: Your Honor, may we approach the bench?

THE COURT: Yes.

(At the bench.)

MR. SKEENS: Your Honor, to avoid any error of any kind I felt I should approach the bench before I asked this next question.

I have information from the jail that the deceased has a larceny record in 1939 and 1940. This witness says he started knowing the deceased in 1941. Now I want to ask him whether or not he knows or knew about the deceased's criminal record at that time. And my basis for that is that this is a self-defense. There was an assault provoked here by a larceny by trick, by crooked dice, and we have a right to show that this deceased has a larceny record and that this was the thing that provoked this particular altercation.

MR. HANNON: I don't believe Mr. Skeens is consciously suggesting that larceny constitutes a defense to homicide, your Honor. The theory of his defense is self-defense. I can't see how larceny enters into that. If this man has con-
 29 victions for assault, as you indicated earlier, your Honor, I have no objection to his bringing that out. But convictions of larceny, I see no basis for that at all.

MR. SKEENS: We propose to show he had a reputation for larceny and this was a larceny by trick with dice and this was what provoked the altercation.

THE COURT: You are not permitted to ask him about whether this man has been convicted of larceny.

* * * * *

38 MR. SKEENS: May we approach the bench, your Honor?

THE COURT: Yes.

(At the bench:)

MR. SKEENS: May it please the Court, I have the file here on the deceased and before I did this in open court I thought I should approach the bench, and in order to substantiate that this is the same record for the deceased, Blenheim, August S., I want to ask the witness if he can identify this folder.

THE COURT: You are not permitted to do it.

MR. SKEENS: Can we excuse the jury?

THE COURT: There is no question but what he knows this man. He says he has known him eighteen or twenty years. There is too much of this coming to the bench. We have to get on with this examination.

MR. SKEENS: Your Honor, I have to try my case.

THE COURT: You have to try your case.

MR. SKEENS: I have to try the case the way I know it.

THE COURT: You have to try it according to the rules of law. I think you are entirely out of order, trying to show this.

39 MR. SKEENS: I am trying by this file --

THE COURT: He knows nothing about this file.

MR. SKEENS: I am not asking him about the file.

THE COURT: I will overrule what you are asking to do. I am not going to permit it.

* * * * *

46 Q. And you and Rush walked up the corner of R Street and Vermont Avenue?

A. Yes.

Q. And it was from there that you saw the deceased lying on the sidewalk on his back with Williams, the defendant, walking up toward you people to the corner; isn't that right? A. Williams was at the corner. We all got to the corner at the same time. Williams, myself and Alston -- I mean Rush and Gertrude.

47 Q. And it was there that you had the conversation and Williams told you that he struck him once with his fist? A. He say he struck him with his fist.

Q. Did he say where he hit him? A. No, he didn't.

Q. Did he tell you how he got to hit him with his fist? A. No, he didn't.

Q. You don't know where he hit him with his fist? A. No, I don't.

Q. He didn't tell you? A. No.

Q. Just about that time Young drove up with the car, up Twelfth Street which runs into Vermont Avenue, isn't that right? A. Well, Rush and myself picked Blenheim up and which way Young come, I don't know. We picked him up. I asked Rush to call an ambulance; he seemed to be unconscious. At that time the car come up.

Q. Did Blenheim say anything to you while he was laying there on the ground? A. No, he didn't.

Q. Was it about that time that the car drove up, Young's car? A. Yes.

48 Q. And then you took him into Young's car to the the hospital? A. Yes.

Q. Were you in the car? Were you in the car when it went to the hospital?

A. Yes, I was.

Q. Which hospital did you go to? A. Freedmen's Hospital.

Q. Do you know roughly about what time it was when you got there? A. I figure about 1:00 or 1:30. Maybe 2:00. It could be later or earlier.

Q. In the morning? A. Yes.

* * * * *

51 REDIRECT EXAMINATION BY MR. HANNON:

Q. Rodgers, at any time from the time the crap game started, up until the time you picked Blenheim up off the sidewalk and put him in Young's car, did you at any time ever hear Blenheim threaten Williams? A. No, I didn't.

Q. This discussion that Mr. Skeens was asking you about that took place between the automobile and the car, who was involved in this discussion? Who was doing the talking there, sir? A. Well, Mr. Williams was doing the talking.

Q. When Mr. Williams was doing the talking, what was it that he said out there at the time? A. I can't recall the exact words.

Q. Tell us as best you recall them. A. He was talking about -- he said, "You know you had bad dice. You should give me my money back."

Q. Was he saying this to whom? A. Well, he had no particular one to say it to.

Q. What else did he say? A. Well, the biggest thing it was all about.

Q. You told us that he said to Alston, "You are not leaving here until I get my money back." Where was that said? A. That was said when Alston got into the car.

52 Q. After the defendant Williams chased Blenheim around the corner, as I understand it, you walked down to the corner that they ran around, is that correct?

A. Yes, I did.

Q. And it was there that you met Williams? A. Yes, sir.

Q. From that position, where you met Williams, could you see Blenheim lying on the sidewalk? A. No, not from where I met Williams. I couldn't see Blenheim on the sidewalk, no.

Q. Where did you have to go from that corner? What corner would that be you met Williams? A. I met Williams at Vermont Avenue and R Street.

Q. Where did you have to go from there before you saw Blenheim? A. I say about 50 feet or more.

Q. And was Blenheim lying on R Street, or what street was he lying? A. Well, that intersection there, it could be Vermont Avenue or Twelfth Street, either one.

Q. Is that the sidewalk that he was lying on -- at the intersection? A. Yes.

Q. Now, when you met Williams -- and Williams was coming back, was he not? A. Well, we all met at the corner about the same time.

53 Q. Now at that time, did Williams say anything about a brick? A. I asked him did he hit him with a brick or stick or anything. He said, 'No, I hit him with my hand.'

Q. From the time that you picked Blenheim up and put him in Young's car, you took him to the hospital, is that correct? A. Yes.

Q. Did you stay with him at the hospital? A. Yes, I was there.

Q. Until he left with Young again? A. Yes, sir.

Q. During that period of time did Blenheim hurt his head again in any way? A. Not that I know of.

Q. At least while you were with him he did not strike his head at any time, is that correct? A. No, he did not.

* * * * *

THOMAS YOUNG, SWORN

DIRECT EXAMINATION BY MR. HANNON:

57 Q. As you were leaving, did anything happen of an unusual nature? A. When we were about to leave Williams, the defendant sitting over there, he said he was going too. So he asked someone to go upstairs and get his coat or something. So we proceeded out the back door into Eleventh Street. And as we got

outside Williams said that the deceased, Augustus Blenheim, was the one that he wanted. And it was all types of emotions out there and everyone was trying to leave and Adams -- Williams was insisting that he was going to get some money back before anybody went anywhere.

58 Q. What did he say? A. Well, he had his hand in his pocket and he said if he didn't get his money he was going to blow somebody away.

Q. Did he say that to anybody particularly? A. Well, he didn't call any names or anything, but he was standing near the deceased, Blenheim.

Q. Now, did there come a time did anybody offer to return money to him? A. Well, Alston offered him, I think \$10 or something. And he was ready to accept it and then I don't know what happened but, anyway, Alston changed his mind. Alston was telling him that if he thought something was wrong, show him where it was wrong. But what was wrong, he would be glad to give him all of it back.

* * * * *

Q. (By Mr. Hannon) When Williams said there was something wrong, could you tell us whether anybody at that time said anything about the dice? A. Well, as far as I think, I think that he just wanted his money back. I don't think that it was anything wrong because if there was, he would have showed where it was
59 wrong and he could easily have gotten his money back.

Q. Where was this conversation taking place at this time, Mr. Young?

A. We were on Eleventh Street near the corner of R.

Q. Now, what happened after that? A. Well, we tried all types of situation, because I called Williams and Alston over to the side and I told them that I wasn't going to stand on the corner all night long and that they could probably reach some kind of a decision or something, and Alston told them, I think Alston was telling them if he show him where the dice was wrong or something was wrong, he would give him all his money back.

Q. What happened after that? A. We were on the corner and Williams kept saying he was going to get his money back or he was going to blow somebody. He kept his hand in his pocket just about the whole time. So Lucy Sims, she went to call the police. She just left. She told this lady she had gone to call the police

and we stood on that corner for, I say, about a half an hour or so. And I had started the motor to my car and the car had been running. So I got in the car and said I was going to leave, I wasn't going to be on that corner all night. So Lucy Sims opened the car door and told Marvin Alston to get in. And she pushed Marvin in, then she got in and Williams jumped the fence.

60 Q. The fence -- where was then (sic) fence? A. The fence, this corner house right there at Eleventh and R.

Q. Did you see what he did when he jumped the fence? A. Well, the first thing that came to my mind when he jumped the fence --

THE COURT: Don't tell us what came to your mind.

A. When he jumped the fence, I left.

Q. Did you have a reason for leaving? A. Well, if I could tell the reason, it would be only what I was thinking. It couldn't be anything other than what I was thinking.

Q. Don't tell us what you were thinking. Now when you left could you tell us where Blenheim was? A. Well, he was about -- he was on R Street, about seven or eight steps from the corner.

Q. Now after you drove away, sir, did you see Blenheim again? A. I drove approximately two or three blocks and circled. I came back to Vermont Avenue and R and Blenheim was laying on the ground. And Aaron Rodgers, Melvin Rush were standing near him, so was Gertrude Adams.

Q. You say he was lying on the ground. What part of the ground was he lying on? A. The cement. Concrete.

61 Q. Was that the street or sidewalk? A. Sidewalk.

Q. And how was he lying on the sidewalk? What position was he in? A. He was lying on his back.

Q. Did someone pick him up at that time, sir? A. Rodgers and Rush picked him up.

Q. What did they do with him? A. They picked him up and brought him over to the car and they put him in the car and we proceeded to the hospital.

Q. What condition was he in at the time they put him in your car? A. He was unconscious.

Q. What hospital did you take him to? A. We carried him to Freedmen's.

* * * * *

63 Q. (By Mr. Hannon) Mr. Young, at the time that this conversation was going on, did you at any time hear Blanheim make any threats to the defendant Adam Williams? A. No, I didn't.

* * * * *

CROSS-EXAMINATION BY MR. SKEENS:

* * * * *

78 A. You see, Williams were only talking to either Alston or Blanheim.

Q. Did you ever hear Rodgers say to the fellows there that if the dice were crooked that Williams should get his money back? A. No, I don't think I remember hearing any of that.

Q. Did you see or hear anybody offer any amount of money to return to Williams? A. Well, he had his hand in his pocket the whole night. Kept saying what he was going to do to somebody, was going to blow somebody away. So I think Alston offered him \$10, asked him would he accept \$10. And I think he said yes. And I don't know what Alston decided after that; because he didn't give him anything.

79 Q. Williams was going to take the ten and go? A. He told Alston yes.

Q. Did Blanheim make any comment after that, when Alston was willing to give him the ten, not to give it to him? A. I wouldn't remember Blanheim making any statements.

Q. You say you heard the defendant say somebody was going to get blown away? A. He had his hand in his pocket just about the whole period of time, saying if he didn't get his money back he was going to blow somebody away.

Q. Did that lead you to believe there was something in his pocket? A. Did that lead me to believe? I don't know what he could have had in his pocket. He could have had something in it and he might not have had anything.

Q. You don't know whether he had anything in his pocket or not? A. No, I don't know.

Q. What did he mean when he said he was going to blow somebody away?

A. I don't know what he meant. I couldn't answer that.

* * * * *

80 Q. You don't know whether he was laughing or whether he was made (sic)?

A. Well, he wasn't laughing. Wasn't any laughs out there at that time of night.

Q. When he made the statement, was it a serious threat or was he just complaining he lost his money? A. I don't know why he said or for what reason or what he meant by it. But he said it, that -- he had his hand in his pocket -- he was going to get his money or else he was going to blow somebody away.

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82 DR. JAMES HAROLD NICKENS, SWORN
DIRECT EXAMINATION BY MR. HANNON:

* * * * *

83 MR. SKEENS: Just a moment. I have an objection, your Honor. I would like to approach the bench.

THE COURT: What is the objection?

MR. SKEENS: The objection is that the prosecutor has not identified this witness as a prospective witness for the Government. He only named Doctor Murphy and Doctor Funderburk, and I think it is objectionable. On that ground he should not be permitted to testify.

MR. HANNON: I know of no rule of law, your Honor, that requires Government to disclose, except in a capital case, first degree murder case or rape.

84 THE COURT: Objection is overruled.

* * * * *

87 Q. I will ask you, sir, on the basis of the information that you know, that is available to you from the records, would all doctors agree after making an examination of Blenheim that this particular impairment, which is disclosed in your records, is what he was suffering from, an unanimity of opinion of all doctors after they examined him that this was what was wrong with him?

MR. SKEENS: I object to that question, your Honor.

THE COURT: The objection is sustained.

MR. HANNON: May we approach the bench, your Honor?

THE COURT: Yes.

(At the bench:)

THE COURT: I don't think he would know what doctors would agree to.

MR. HANNON: He had a fractured skull.

THE COURT: He can say he had a fractured skull.

MR. HANNON: He can say it only if all doctors would agree with him he had a fractured skull. That is what I am trying to get out of him. If doctors might differ in their opinion as to what he was suffering from, then the Court of Appeals says he may not express an opinion since he did not make an examination. But if all doctors after examining Blanheim would agree -- for example, if he had a laceration of the arm, everybody looking at it would say that. If all doctors examining Blanheim would say he had a fractured skull, then this doctor is permitted
88 to say it.

THE COURT: What case are you referring to?

MR. HANNON: Pardon me?

THE COURT: What case are you referring to?

MR. HANNON: A New York Life Insurance case, your Honor, is the one that says that a doctor may testify regarding matters relating to a patient --

THE COURT: I am very familiar with that case and that case says that it is the diagnosis of some other doctor that you can --

MR. HANNON: This doctor never saw the patient, your Honor.

THE COURT: Well, he can testify to what the record indicates. Doesn't the record indicate that he died from skull fracture?

MR. HANNON: The autopsy will indicate that. If you would withdraw your objection, I will go ahead and ask him, so long as it is noted in the record he has no objection.

MR. SKEENS: I certainly am objecting to the form of the question. I think it is prejudicial. I think he is trying to imply to the jury that all doctors would agree --

THE COURT: I think that whatever the factual situation -- for instance, a doctor can testify that the record shows that he has a broken arm or broken finger.

89 MR. HANNON: Or a fractured skull.

THE COURT: Yes.

MR. HANNON: All I wanted the record to show, your Honor, is that when this doctor testifies that this man had a fractured skull, that the nature of the fracture is such that every doctor would have to agree; every doctor would also say he had a fractured skull.

THE COURT: I don't remember a thing in the New York case saying all the doctors had to agree.

MR. HANNON: It has to be a diagnosis over which there would be no difference of opinion and if I can get the doctor to say that no doctor examining this man would differ in their diagnosis that he had a fractured skull, then I am within the rule of the Court of Appeals.

THE COURT: Aren't you going to have Doctor Murphy?

MR. HANNON: Regarding the cause of death, yes. But I want to show when this man went in the hospital he had this same injury, a fractured skull.

THE COURT: He can show what he had from his record.

MR. HANNON: All right, I will ask him then, your Honor.

MR. SKEENS: Your Honor --

THE COURT: I know. You object. I am overruling the objection.

MR. SKEENS: On the basis of that type of question as to all doctors.

90 THE COURT: I will deny the motion.

MR. SKEENS: Is he going to be --

THE COURT: I have ruled. Please take your seat.

(Counsel returned to counsel tables.)

Q. (By Mr. Hannon) Doctor Nickens, the records reflect what Blanheim was admitted to Freedmen's Hospital for? A. Do you want his diagnosis?

Q. Yes. A. His final diagnosis?

Q. Yes. A. Left --

MR. SKEENS: Just a minute. I object, your Honor.

THE COURT: The objection is overruled.

MR. SKEENS: For the same reason.

THE COURT: Yes. And it has been ruled on. You know what the ruling is. Now take a seat.

A. Left occipital skull fracture with massive right and small left subdural hematoma.

Q. Would you indicate, sir, on your own skull where a left occipital linear skull fracture would be. A. This is an occipital bone. The occipital bone is the bone in the rear.

Q. The rear? A. The rear of the skull. And where the spinal cord joins
91 the skull there is an opening, foramen. This particular fracture extended from this opening, from foramen magnum. Upwards.

Q. How far upwards, sir, by indicating, if you will? A. It is not mentioned in inches. There is a drawing here which would indicate half way up on that occipital bone, which would be a distance of about an inch and a half.

Q. Would you turn, sir, and indicate with your hand to the ladies and gentlemen of the jury the length of the fracture on your own skull.

(Witness indicated.)

MR. HANNON: May the record show, your Honor, that he started at the base of the hair line and went up about two inches.

A. An inch and a half to two inches.

Q. The base of the hair line to the back of the neck. Would you say the top of the neck area? A. That is right.

Q. Doctor Nickens, you also said, sir, that he had massive right subdural hematoma. In the language of laymen, sir, what does that mean? A. He had two blood clots. A hematoma is a blood clot. A large one on the right side of his skull and a smaller one on his left side.

92 Q. How are these blood clots formed? What causes them, sir? A. Bleeding beneath the skull, between the brain and the skull. Bleeding and then clotting, of course, cause blood clots.

Q. When this bleeding occurs, is the blood trapped in between the brain and the skull? A. That is right. It can't come out.

MR. HANNON: I believe that is all I have.

MR. SKEENS: Your Honor, I would like the record to show I am not waiving my objection by cross-examination of this witness.

THE COURT: What is that?

MR. SKEENS: I would like the record to show I am not waiving my objection by cross-examination of this witness.

THE COURT: You are not waiving any objection by cross-examining the witness. You may cross-examine the witness at this time.

* * * * *

CROSS-EXAMINATION BY MR. SKEENS:

* * * * *

96 MR. HANNON: No, your Honor, I have not read it.

THE COURT: Will counsel come to the bench, please.

(At bench:)

THE COURT: I find there is a statement in this New York case that says hospital records containing regularly recorded facts as to patient's condition, treatment on which the observations of competent physicians would not differ, are admissible, and so forth. So you may ask him that question that you wanted. I think your form isn't exactly that. I think it ought to embrace the idea of competent physicians.

97 MR. HANNON: All right, your Honor.

* * * * *

98 MR. SKEENS: I have nothing further on this statement.

Q. Doctor, you stated that you have been a medical doctor since 1939 and that you served your internship at Freedmen's? A. That is right.

99 Q. And during this internship you were assigned to the admissions section of the hospital? A. That is right.

Q. Where persons first come in off the street. Now, sir, if a man comes in to you off the street, is brought there by someone else in a semi-conscious condition, and he has sustained a blow to the back of the head, and you see a bump there, and you are told that he was struck by an unknown object --

MR. HANNON: Object to that. No testimony anybody was told anything.

Q. (By Mr. Skeens) -- or that he had a pain in the back of his head --

THE COURT: Just a moment. The objection is sustained.

Q. (By Mr. Skeens) Strike that part out. Or that his head struck the pavement, on a concrete pavement --

MR. HANNON: Object to that. Same reason, your Honor.

THE COURT: The objection is sustained.

Q. (By Mr. Skeens) All right, Doctor, I will rephrase the question. Person is brought in to you by people off the street in a semi-conscious condition, sustains a blow to the back of the head as indicated by a bruise. Now, sir, what procedure
100 would you take upon seeing that person brought to the hospital?

MR. HANNON: Just a moment, Doctor. Object again, your Honor. There is no testimony that this deceased, Augustus Blenheim, was seen by any doctor when he first went to Freedmen's Hospital, so the hypothetical question is not based upon the facts of the case.

THE COURT: The objection is sustained.

MR. SKEENS: Your Honor will not permit me to pursue this further?

THE COURT: I will permit you to pursue proper cross-examination.

MR. SKEENS: Procedures of the hospital.

THE COURT: Proper cross-examination you may pursue.

MR. SKEENS: I can't examine any further in view of that objection, your Honor.

REDIRECT EXAMINATION BY MR. HANNON

Q. Doctor Nickens, as a matter of fact, sir, the reason why you were sent down by the hospital today is because Doctor Funderburk, the treating physician, is no longer in the city, is that not so? A. That is right.

Q. And then there was another doctor, Doctor Smith, he is no longer in the city? A. That is right.

Q. So you are here to replace them? A. I brought the records.

101 Q. At no time, sir, did you ever examine the deceased, Augustus Blenheim?
A. Never saw him.

Q. Doctor, I want to return to the question I tried to put to you earlier, and I will ask you this: If Augustus Blenheim were examined on his admission

to Freedmen's Hospital by all competent physicians and they all gave him a thorough examination, sir, would all competent physicians agree that he was suffering from a fractured skull?

MR. SKEENS: I object to the form of the question.

THE COURT: The objection is overruled. You may answer.

A. On the basis of information obtained after he was seen, there is hardly any doubt that they would agree on the diagnosis of fractured skull.

Q. Thank you, sir. Now, you know a little bit about Freedmen's Hospital, Doctor, in view of the fact you have been there so long. Let me ask you this: How busy is the emergency room of Freedmen's Hospital, say, Friday evenings at midnight?

MR. SKEENS: I object to anything beyond the scope of cross-examination.

THE COURT: The objection is overruled.

A. Friday night and Saturday nights are our busiest nights.

102 Q. If a man were brought in to Freedmen's emergency room on a Friday night at about 1:00 or 1:30 a.m., and there were a number of patients who had arrived prior to his coming to the hospital, and who were suffering from open wounds, and a nurse came along and merely put a patch --

MR. SKEENS: I object to that question.

THE COURT: The objection is overruled.

MR. SKEENS: There is no testimony of other persons suffering from open wounds in this case.

THE COURT: You haven't heard some of the testimony, Mr. Skeens. Will you be seated, please.

* * * * *

103

MARVIN ALSTON, SWORN

DIRECT EXAMINATION BY MR. HANNON

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104

Q. Was that at Christine Jackson's house? A. That is right.

MR. SKEENS: Objection to leading questions.

THE COURT: The objection is overruled.

* * * * *

107 A. That is right.

Q. Will you tell us what happened when the game broke up? A. Well, this fellow, Williams, accused him of using bad dice.

Q. Who did he accuse? A. Blanheim.

Q. Did Blanheim say anything to him at the time? A. Yes. He told him that he was crazy, that he didn't have any dice, opened his hand and throwed his money down.

Q. Where was Williams and Blanheim at the time Williams accused him of using bad dice? A. They were each end of the table, at far end of the table.

Q. Still in Christine Jackson's? A. That is right.

Q. What happened after the accusation made by Williams that Blanheim had been using bad dice? A. We kept playing after that. Then Williams, he kept arguing with Blanheim. So finally, I told him let's stop; there was no sense in playing. So then we decided to leave and Williams told another young fellow was there to go upstairs and get his coat and hat. Then he told Melvin Rush to come on with him, that he was going to get his money before we left.

Q. Did you leave at that time? A. Yes, sir.

108 Q. Did Williams say anything, anything more up until the time that you left? A. Well, in the house there, just before we left he made a statement about he was going to blow Blanheim away.

Q. Did you leave by the rear entrance? A. That is right.

Q. And that took you out to where? A. Eleventh Street.

Q. Did anything further happen out on Eleventh Street? A. As we got in the yard he got in front of us, Williams, and the lady came in and told us we had to move away from her door, she didn't want that in front of her door.

Q. Did you move away? A. Yes.

Q. What was happening in front of her door? A. We were still arguing. He claimed that he should get his money back.

Q. And did you move away? A. That is right.

Q. Where did you go? A. To Eleventh and R.

Q. Did anything further happen between the rear of the house and Eleventh and R. Streets? A. Well, he just kept insisting on his money.

Q. When you got down to Eleventh and R, Mr. Alston, tell us what happened down there. A. Well, we started into the car. And that is when I stepped in the
109 car he told me, he say, "If you get in that car without giving me my money, I am going to blow you away."

Q. Go ahead. A. So I stepped back out of the car and everybody else did. And at this time, I told Lucy, I say, "Well, let's go to the police and we can get it straightened." He says, "We claim the dice was bad." He said, "Well, we can go to the police." I said, "You can ride in the car." He said, "No, we can't ride in the car." So then we told Lucy Sims to go call the police. She left to call the police. Then when she came back we were still arguing.

Q. When you told Lucy to get the police, was Williams there at the time? A. That is right.

Q. When she came back you were still arguing? A. Still arguing.

Q. What happened when she came back? A. She came back and said, "You still arguing?" I say, "Yes, he won't let me go." At the time, he had his hand in his pocket, so she said, "Well, come on then." She stepped in between us. Then she pushed me towards the car. She opened the door. She shoved me in. She got in, Tommy got in. He jumped over the fence and Tommy drove away
110 Q. Where was the fence that he jumped over, Mr. Alston? A. It's right there at the corner of Eleventh and R.

Q. When he jumped over the fence did you see what he did? A. No, I didn't. It was dark and as he jumped the fence we drove off.

Q. Now, did there come a time during the discussion that you offered to give him back some of the money? A. Yes, sir.

Q. How much did you offer to give him back? A. Ten dollars.

Q. And why was it that you offered to give him ten dollars? A. Well, he wanted to take it all.

Q. He wanted to take back all of the money that you had won? A. That is right.

Q. And so you offered him ten dollars instead, is that right? A. That is right.

Q. Now, did you give him the ten dollars? A. No, I didn't.

Q. Why didn't you give him the ten dollars? A. I told him if the dice were bad, looked like he would accept all his money instead of ten. Then Lucy came up at that time and said, "Don't give him none of it," and pushed me towards the
111 car. She stepped right in between us.

Q. Then you got in the car and drove off? A. That is right.

Q. Now, you got into the car and the car was being driven by Thomas Young, is that right? A. That is right.

Q. After you got into the car where did you go? A. We went about two blocks and turned around.

Q. And did there come a time that you saw Augustus Blanheim again? A. Yes, sir.

Q. When you drove off where was Blanheim? A. He was behind us. He was standing on the side there.

Q. And he didn't go with you, is that correct? A. No, he didn't.

Q. Was there a reason for his not coming with you in the automobile? A. Well, yes. Like, the fellow jumped over the fence, the boy drove off right then.

Q. And so when you drove off Blanheim was standing there on the sidewalk? A. That is right.

Q. By Williams. And when next you saw Blanheim where was he? A. He was laying on the corner.

112 Q. What corner? A. I am not sure. I think it was Twelfth and R.

Q. And what part of the corner was he lying on? Where was he laying?

A. He was laying on his back, with his head towards the curb.

Q. Was he in the street or sidewalk, or where? A. He was on the sidewalk.

Q. Now when you saw him, did you see Williams anywhere? A. No, I didn't.

Q. Did you see anybody else besides Blanheim at that time? A. There was Gertrude and Rodgers.

Q. All right. When you saw Blanheim what, if anything, did you do? A. We immediately picked him up and put him in the car and carried him to the hospital.

Q. What hospital did you take him to? A. Freedmen's.

Q. When you picked him up did you look at him to see if something was wrong with him, Mr. Alston? A. Yes. We could see it. Blood was running from his head.

Q. What part of his head? A. The back of his head.

113 Q. Where you are indicating with your fingers? A. Yes, sir.

Q. The back of your skull. When you got to Freedmen's Hospital did you take him inside? A. Yes, sir.

Q. Who took him into the hospital? A. Well, Rodgers and I.

Q. What happened after you got into Freedmen's? A. After we got in we sit him down and we tried to get waited on. It seemed we couldn't get any service and then he came to. He kept insisting about his head was hurting, he wanted to go home. We told him we were trying to get him looked at. He kept insisting to go home.

Q. Did any doctor ever see him? A. No, sir.

Q. Did a nurse look at him? A. Yes. She looked at him and put a patch on his head.

MR. SKEENS: Object to the continual leading questions, your Honor.

Q. There came a time then that you left the hospital, is that right, sir?

A. Yes, sir.

Q. You told us that you took Augustus Blenheim home? A. That is right.

114 MR. SKEENS: Object on the same grounds, Your Honor. Calling for a yes answer.

THE COURT: I believe this was repeating something the witness had testified to.

MR. HANNON: Yes, your Honor. It is preliminarily to the question I am now asking.

* * * * *

115 Q. And then after he was inside the hospital, is that when he regained consciousness? A. That is right.

MR. SKEENS: Object to the leading question.

MR. HANNON: I think that follows from the answer, your Honor.

* * * * *

116 Q. (By Mr. Hannon) One further question, Mr. Alston. From the time that this dice game broke up, at Christine Jackson's house, up to the time that you jumped into Thomas Young's automobile and drove away, did you at any time hear Augustus Blanheim threaten the defendant Adam Williams? A. No, I didn't.

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131 DR. CHRISTOPHER J. MURPHY, SWORN.

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132 DIRECT EXAMINATION BY MR. HANNON:

Q. And, Doctor Murphy, in view of the stipulation, sir, would you now tell us your name. A. Christopher Joseph Murphy.

Q. Would you also tell us, sir, how long you have been coroner, deputy coroner, here in the District of Columbia. A. About 28 years, sir.

Q. Doctor Murphy, did you perform an autopsy on one Augustus S. Blanheim in April of 1958? A. I did, on April 20th, 1958, at 1:00 p. m. at the D. C.

133 Morgue.

Q. And the results of the autopsy performed by you, sir, are what? A. This decedent was identified to me by the name of Augustus Blanheim. He was a colored man with a given age of forty-three. He weighed 105 pounds and he was 5 feet 5 inches in height. He was unclothed at the time of his admission to the Morgue.

My autopsy revealed that this man came to his death as a result of hemorrhage and shock caused by a fracture of the skull.

* * * * *

135 Q. Doctor Murphy, on the basis of your experience as coroner, together with the examination that you made, or the autopsy that you performed on Augustus Blanheim, I will ask you this: The fractured skull that you spoke of, is it possible, sir, that that injury could have been sustained as a result of this deceased's head striking the sidewalk? A. Yes, sir.

Q. As a result of a blow to the face? A. It can be the result of anything that caused his head to strike the sidewalk. Any outside trauma that would be

of sufficient nature to knock him off his feet would be of sufficient nature to cause a fracture of his skull from his skull hitting the ground in the back.

Q. Would you be able, sir, to tell us what part of the skull would have hit the sidewalk? A. The back of it, sir.

MR. HANNON: Thank you very kindly.

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138

REDIRECT EXAMINATION BY MR. HANNON:

Q. Doctor Murphy, I have one question. The existence of this metallic plate plus the old incision that you spoke of, sir, did either of these two items have any part to play in bringing about the death of Augustus Blenheim? A. They did not, sir.

THE COURT: Doctor, did I understand you to say this fracture went from the eye back?

139 THE WITNESS: No. It came from the left side and ran back down through the occiput, the way I am pointing, like that.

THE COURT: Where did it start?

THE WITNESS: It started in the left parietal -- It started through the left occipital bone -- that is over here -- running to the mid line and down into the base. It left part of the back part of the head and then run to the mid line and down into the base of the neck.

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MRS. FLORENCE BLANHEIM, SWORN

DIRECT EXAMINATION BY MR. HANNON:

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144 MR. SKEENS: May we approach the bench, your Honor?

THE COURT: Yes.

(At the bench:)

MR. SKEENS: At this time, your Honor, I propose to ask this witness about her husband's past criminal record which consists of the larceny conviction in 1939; larceny conviction in 1938; larceny conviction in 1940; and various alcoholic beverage control violations for which he served jail sentences on all of them.

145

THE COURT: I looked in that record.

MR. SKEENS: January 11, 1940, whether she knew her husband was taking-- of course, this is before they were married, I believe; I am not sure; at least he said he was single in the record -- a quarter ounce heroin daily intravenously, and over a period of four years, and he was suffering withdrawal symptoms, with scars, in 1940 while he was in District Jail.

MR. HANNON: Again, the same objection I made before, your Honor. There is nothing in the record. If counsel has got something in the record to indicate in the past the deceased was an assaultive nature, the defendant knew it and caused him to feel that he had to take action in defense of his life, that would be something different. But larceny, use of heroin is not.

MR. SKEENS: Larceny by trick.

THE COURT: As I said earlier today, I think that if there were any convictions of assault, anything to indicate that he was of that character who would make assaults on people, that that would be admissible.

I reviewed this record that you have here and the only thing that I find is thirty days for larceny at one time and ninety days at another time and then I
146 think there was 270 days on a third time.

MR. SKEENS: Dropped down charge.

THE COURT: All for larceny. And I found no other convictions of any description or kind in here.

MR. SKEENS: It is the defendant's contention that there was a larceny of \$15 from the defendant by --

THE COURT: That wouldn't justify him in killing him or knocking him down, if he did.

MR. SKEENS: I presume there is no sense in my trying to offer this. I presume the record shows. I was going to try to introduce this later on. I am going to save the trouble of doing it.

THE COURT: I ruled that you could bring in assaults, if there were any records of assaults or anything like that, or anything that this man knew of that would indicate to him that this decedent was of a character where he would commit

assaults on people. But I don't think that anything in this record is admissible.

MR. SKEENS: Now I say this --

THE COURT: You have your exception.

MR. SKEENS: I have researched this case very thoroughly, and that might be where the death occurs by a weapon. But this is a death occurring by a blow. The Government seems to think that it is going to get malice out of this because

147 there was no intention to kill

THE COURT: You don't have to have an intention to kill.

MR. SKEENS: You have to have malice.

THE COURT: You have to have malice in second degree.

MR. SKEENS: How is he going to get that out of one blow of the fist?

THE COURT: That is for the jury to determine.

MR. SKEENS: I am going to make a motion later on.

THE COURT: You can.

MR. SKEENS: However, on the basis of your Honor's rulings I cannot make any other attempt to offer that record in evidence.

THE COURT: Not this record.

MR. SKEENS: I will abide by your Honor's ruling on that.

(Counsel returned to trial tables.)

Q. (By Mr. Skeens) Now, Mrs. Blenheim, about the time that your husband was hurt that night, was he drinking? A. Not as I know of.

Q. Would you say that he hadn't been drinking at all, the last, say, few months before that? A. My husband drank but I don't know whether he was drinking that particular night or not.

Q. Would you say he was drinking excessively over the period of time just
148 before this and acting in a funny and strange way?

MR. HANNON: I object to it, your Honor. I don't think it is relevant or material, as to what he was doing in the past two or three months.

THE COURT: The objection is sustained.

MR. SKEENS: Your Honor, this is a second degree murder case.

THE COURT: It is a second degree murder case.

MR. SKEENS: The reflection of a witness --

THE COURT: I have ruled, Mr. Skeens.

Q. (By Mr. Skeens) Was your husband forgetful, or anything of that nature, just immediately before he was hit in this thing on the 19th of April?

MR. HANNON: What does he mean by "immediately before he was hit?" May we have that defined?

THE COURT: Yes. Will you fix the period that you are inquiring about; whether it is a month or the --

Q. (By Mr. Skeens) Within a matter of weeks or a month. A. Not as I noticed.

Q. He didn't act peculiarly at all to you? A. Not to me.

Q. Do you remember talking to any doctors at Freedmen's Hospital.

MR. HANNON: I object to the question, your Honor. I think what he seeks
149 to do is to impeach the witness. This is ancillary. It is not material and consequently does not impeach.

THE COURT: Your objection is sustained.

MR. SKEENS: Your Honor will not permit me to make any questions about the history statement this witness made to the doctor?

THE COURT: No. It is immaterial.

MR. SKEENS: I have no further questions in view of that ruling.

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ROY C. SCHWAB, SWORN

DIRECT EXAMINATION BY MR. HANNON:

Q. Sergeant Schwab, sir, tell us your name, your rank, and your assignment. A. Roy C. Schwab, detective sergeant, assigned homicide squad, Metropolitan Police Department.

* * * * *

150 A. I talked to Mrs. Blenheim, and from other information received I arrested the defendant, Adam Williams.

Q. When did you arrest Adam Williams? A. About ten -- Around ten o'clock on a Sunday morning, April 20th, this year.

Q. Where was he at the time? A. 926 E Street, Southwest, sir.

Q. You went to 926 E Street? A. I did. The defendant was sitting in the back room playing cards with some other men. I asked him to step into the front room, I wanted to ask him some questions, that he wasn't under arrest at the time. He got up from the table, came in the front door and I closed the door and he said, "I know what you want to talk about." So I started questioning him about the death of Blanheim. He told me that he had had some trouble with Blanheim, a fight. He said he didn't know his name but that he went to 1711 Vermont Avenue about 11:00 p.m. on April the 19th and became involved in a crap game there and lost seventeen dollars; that this man Blanheim was in the game and there was another man in the game with Blanheim and they were working together and that Blanheim was drinking and he saw Blanheim put some dice in the game and he looked at the dice and they were pear-shaped and it was about one o'clock. He asked for his seventeen dollars back and the game broke up and
151 they went outside on the street; and at this time the man Alston agreed to give him ten dollars of the money back, and he stated at that time Blanheim reached into his shirt and said, "Don't give him nothing back. You didn't put the dice in the game." And then Alston got in the car which was parked at the curb and drove away and Blanheim had his hand in his shirt and he, Williams, jumped over a little fence there and picked up a brick.

Q. This is what he told you? A. This is what he told me. And at that time Blanheim ran west on R Street and he chased him and when they got to Twelfth Street he caught up with him and he saw -- also, he stated during the time he slipped and fell once while chasing Blanheim and he told me that he dropped the brick there, and then he caught up with him and Blanheim swung around and grabbed him and he said that he struck him and knocked Blanheim to the street and Blanheim's head hit the street twice and bounced and he laid there unconscious and he, Williams, walked on back to the street and met two other men that were there and they asked him if he had hit him with anything and he said no, he just hit him with his fist.

Q. Did you arrest him at the time? A. At that time I told him he was under arrest, and that this man was dead, yes, sir.

Q. Did you transport him? A. Took him to the police headquarters, where
152 he was processed, finger-printed, and I asked him if he cared to reduce this
statement to writing.

Q. What time was this did you ask him? A. This was approximately around
11:30 or 11:20 and he said he would be willing to and he sat down at a typewriter
and the statement was typed by Detective Wallace.

Q. In your presence? A. In my presence and signed in my presence by the
Defendant Williams when he finished.

Q. How was the statement prepared? A. Wallace was at the typewriter and
he talked to Wallace and Wallace typed as he told him what happened. The state-
ment was about the same as he told me originally before he was arrested.

Q. When Officer Wallace had completed typing the statement was the state-
ment given to the Defendant Williams? A. The statement -- After it was com-
pleted the statement was given to Williams and he read the statement over and
signed it.

Q. Was the statement signed in your presence? A. It was signed in my
presence.

Q. Do you have the statement with you? A. I do.

Q. May I have it? A. Yes, sir.

153 MR. HANNON: May I have this marked as Government's Exhibit No. 1 for
identification?

THE COURT: Yes, it may be marked for identification.

MR. HANNON: And, your Honor, if I understand correctly, Mr. Skeens
has earlier been furnished a copy of the statement. Is that correct?

MR. SKEENS: I would like to compare it.

MR. HANNON: Please do.

MR. SKEENS: Your Honor, the defendant informs me this is his signature,
therefore we would have no objection to this being admitted in evidence.

MR. HANNON: Does Mr. Skeens agree he has been furnished a copy of this
statement?

MR. SKEENS: Yes, sir.

MR. HANNON: Thank you.

Q. Officer Schwab, I show you what has been marked as Government's Exhibit No. 1 for identification. I ask you if that was the statement taken from the defendant and signed by him in your presence. A. That is correct, yes, sir.

MR. HANNON: I offer it into evidence, your Honor, and request permission to read it to the jury after counsel has had opportunity to cross-examine. That completes my questioning of Officer Schwab.

154 THE COURT: How long after he was arrested?

THE WITNESS: He was arrested about 10:30, your Honor, and the statement was started at 11:20 a.m. About an hour. And he was placed in cell at twelve noon and no one went near him until he was arraigned in court the next morning. The Assistant United States Attorney was contacted and advised of it.

THE COURT: Admitted.

(Government Exhibit No. 1 for identification was received in evidence.)

MR. SKEENS: I have no objection, your Honor.

CROSS EXAMINATION BY MR. SKEENS

* * * * *

156 Q. Now, sir, in your testimony here today other than this written statement that you have produced, I notice you have made reference to times that the statement began, 11:20 a.m., you were at 1711 Vermont Avenue, where they had this game? A. Correct.

Q. And it happened on April 19? A. Correct.

Q. And it was 11:20 a.m. when you began the statement and this all happened on April 20? A. That is right.

Q. Now, sir, since that time until today, which is the latter part of August, are you testifying today from what you remember then, or did you use something to refresh your recollection? A. I used something to refresh my recollection.

Q. Did you use something other than the statement? A. My notes.

157 Q. May I see your notes, sir? A. I don't have my notes with me in court, sir.

Q. Well, how long would it take you to get the notes, sir? A. Well, I would have to go back and go in my desk drawer and unlock it -- headquarters.

Probably forty-five minutes.

MR. HANNON: At this juncture counsel is not entitled to the officer's notes.

Q. (By Mr. Skeens) You used those notes to refresh your recollection?

A. Yes, sir.

Q. To testify here today? A. Yes, sir.

MR. SKEENS: I would like to see those notes tomorrow morning.

MR. HANNON: The question is when did he refresh his recollection.

THE COURT: When did you refresh your recollection by the notes?

THE WITNESS: About two days ago.

THE COURT: He hasn't used his notes here in the courtroom. The Court will sustain the objection.

158 Q. (By Mr. Skeens) You refreshed your recollection two days ago in preparation for this trial today? A. That is right.

Q. And without refreshing them, you wouldn't have remembered all those things? A. Not quite all. I handle cases every day.

MR. SKEENS: On that basis, your Honor, I believe I am entitled to the notes.

THE COURT: The Court has ruled.

Q. (By Mr. Skeens) Officer, in the course of your investigation did you also talk to Alston and Rodgers and the other witnesses to this game? A. I did, yes, sir.

Q. Did you get any written statements from them? A. Yes, sir.

Q. And what did you do with them? A. They are here, sir.

Q. You have them in your file? A. I do.

MR. SKEENS: I would like to have those statements produced for my examination, may it please the Court.

MR. HANNON: I object to that, your Honor. The law is, your Honor -- notes are available. I have had them all during trial. As each witness has concluded his testimony on behalf of the Government counsel was entitled to the notes for the purpose of cross-examining each witness. He didn't ask for them. His only purpose in getting them now, as I can see it, your Honor, is to prolong this trial.

159 MR. SKEENS: May I say this, Your Honor: Your Honor will look in the court file --

THE COURT: Just one moment.

MR. SKEENS: Your Honor will look in the court file you will find a motion as well as a subpoena to produce those statement and it was denied on both occasions, so I made a timely demand.

THE COURT: The rule is, as you know, after the witness has testified that you are then entitled to the notes. When these witnesses earlier today, you didn't ask for any notes.

MR. SKEENS: Because the District Attorney didn't have them and never did. The witness has them.

MR. HANNON: Your Honor, I am in better position to know whether I have them or not, and I have been using them all during trial.

THE COURT: Your request comes too late, Mr. Skeens. They are finished their testimony now.

MR. SKEENS: Your Honor, I observe people still in the courtroom. Mr. Rodgers is there. Mr. Young is there. Mr. Alston is there.

THE COURT: I am not going to re-open the examination of all these witnesses that have been on here today.

* * * * *

160 MR. HANNON: Ladies and gentlemen, I read to you from Government's Exhibit No. 1 which has been admitted into evidence.

"Office of the Homicide Squad, Metropolitan Police Department, Washington, D. C., April 20, 1958, statement started: 11:20 a. m.

"Homicide case, re death of Augustus Blenheim, colored, 43 years, pronounced dead at 7:12 p. m., April 19, 1958, by Doctor Funderburk at Freedmen's Hospital.

"Question by Detective Sergeant Roy C. Schwab:

"Question: What is your full name, age, and place of residence? Answer: Adam Clay Williams; twenty-eight; 1755 Quebec Place, Northwest.

"By Detective Sergeant Roy C. Schwab:

"Williams, you are being held on account of the death of Augustus Blenheim, who was pronounced dead at 7:12 p. m., April 19, 1958, death being

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caused by his being struck while at Vermont and R Streets, Northwest, about 11:45 p.m., April 18, 1958, and I will now ask you if you want to make a complete statement telling what knowledge you have of this altercation so it can be taken down in typewritten form. Before making such a statement, I advise you your statement must be made freely and voluntarily; also, your statement can be used in court. After hearing what I have just told you, you want to make a complete statement? Answer by Adam C. Williams: Yes, sir.

"Questions by Detective Sergeant Roy C. Schwab:

"Question: How long had you known the decedent, Augustus Blanheim?
Answer: I didn't know him.

"Question: While on the corner of Vermont and R Streets, Northwest, about 11:45 p.m., April 18, 1958, did you have some trouble with Augustus Blanheim which led to his death? Answer: Yes, sir.

"By Detective Sergeant Roy C. Schwab:

"Now, Adam Clay Williams, tell me in your own words what occurred which resulted in this blow being struck.

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"About 11:00 p.m. Friday night (April 18, 1958) I went to 1711 Vermont Avenue, Northwest, where I got in a crap game with several other fellows. I don't know their names. During the game I lost seventeen dollars and then I noticed that the dice were pear-shaped and that they were crooked. The fellow that I hit (Blanheim) was shooting the dice at the time and he was acting like he was drunk and I saw him put the dice in the game. I then picked the dice up and looked at them and I told him that he was wrong. Then his partner quit the game. He was the one that had won all the money (Alston). After that we all went outside. When we got outside I asked the man that won all the money (Alston) for my seventeen dollars back. He said that he would give me ten dollars back, and then this man that I hit (Blanheim) said for Alston not to give me anything back. The fellow that I hit, (Blanheim) ran his hand in his shirt and I jumped over the fence and picked up a brick. Then this fellow that won the money drove on off in a car that had been parked to the curb. Then Blanheim ran up the street and I chased him. I caught up

with him and when I saw that he didn't have any weapons in his hand I dropped the brick and I hit him with my fist and he went down and bounced on the concrete twice. It was his head that hit the concrete. He then just laid there. I walked away and that is when I met two other men (Melvin Rush and Aaron Rodgers) and I told them that I hit him with my fist and not with a brick, when they asked me what I hit him with. They then went over to

163 Blanheim and I went on my way with friends to a party.

"Questions by Detective Sergeant Roy C. Schwab:

"Question: Were you drunk or sober at the time of the trouble? Answer: I was sober. I hadn't anything to drink."

That concludes page one, and affixed to it is the signature of Adam C. Williams. Then on page 2.

"Statement of Adam C. Williams, April 20, 1958.

"Question: Was Blanheim drunk or sober at the time of this trouble? Answer: He had been drinking heavy.

"Question: Did you see any weapons in Blanheim's hand at any time? Answer: No, sir.

"Statement typed by Detective Samuel E. Wallace. Statement finished at 11:35 a. m., April 20, 1958, signed Adam C. Williams, witnessed by Roy C. Schwab."

With that, your Honor, the Government rests.

* * * * *

164 THE COURT: * * * * *

165 Mr. Rush, we didn't reach you today and you are directed to return and be here at 10:45 tomorrow morning.

MR. SKEENS: May it please the Court, I have two motions I would like to make. The first one is a motion for a mistrial. The basis for the motion is that the defendant's counsel -- his efficiency has been effectively destroyed due to the rulings and the atmosphere of the trial. I firmly believe that in your Honor's ruling the jury took the view that the statements made where I was ordered to sit down, and the other remarks of that nature, imbued in the jury's mind the fact that I am belligerent with the Court, the fact that I have disrespect for the Court,

which of course I deny, but at least it appears from the way that the matter has been proceeding today. I think that my effectiveness for this defendant has been destroyed in the presence of this jury and for that reason I ask for a mistrial.

MR. HANNON: Your Honor, may I say on behalf of the Government I have observed no conduct either by counsel or by the Court itself, that would indicate in any way counsel's effectiveness through his conduct or any other type of conduct has been impaired. So I oppose the motion.

THE COURT: The motion is denied.

* * * * *

166 THE COURT: Mr. Skeens, you had a motion that you desired to make this morning. I will hear it now.

MR. SKEENS: Yes, your Honor. The motion I make at this time, your Honor, is for a judgment of acquittal on the charge of murder in the second degree. I say that the only thing the jury has a right to consider in this case on the basis of the Government's evidence is a charge of manslaughter.

In support of that position I relate to A. L. R. citation, inference of malice or intent to kill where killing is by blow without a weapon. And that has a long and exhaustive study of all the cases in the entire United States and it has an annotation to Commonwealth of Pennsylvania v. Buzard, which appears in 22 ALR 2d 846. I note in none of the annotations is there a case specifically from the District of Columbia.

167 That is 22 ALR 2d 868 where the position that I make fully is sustained by cases from California, Colorado, Iowa, Massachusetts, Missouri, Pennsylvania, Virginia, Washington, West Virginia, England, and that is Section 4 on page 868.

"Malice raising the grade of a homicide from manslaughter to murder will not ordinarily be inferred from a blow with the fist."

I think it is undisputed in this case, and the defense is going to say as well, that the death occurred here from striking of the head on a sidewalk as a result of a blow to the chin or to the face of the deceased by the defendant, which is the evidence in this case.

There are some interesting cases which almost parallel the situation here. Primarily, one of the cases that I will read from is on page 870 in that A. L. R. citation, *Roark v. Commonwealth*, a 1944 case, 182 Va. 244, 28 SE 2d 693.

Might I interject here, your Honor, you will recall that this was a second degree murder indictment with malice, the killing being with a brick, and then, if you will note in the file, I filed a motion to produce the brick and it was as a result of that motion the Government said they had no brick and then it went back to the Grand Jury and they returned a second indictment of murder with the fist, and I think they erroneously told the Grand Jury to return the same indictment, because it is actually unheard of for second degree murder charge where death is a result of a fist unless the man is a boxer or a fist is in some
168 way a deadly weapon. But in this case there was only one blow.

In this *Roark* case, the evidence that the parties had always been on friendly terms and the blow was occasioned by the deceased's injecting himself into a business discussion and then calling the defendant vile names, and the defendant, although right-handed, hit him with the left hand or fist and immediately helped him when he saw that he was unable to rise, taking him to the hospital where he died from a fracture occasioned by hitting the sidewalk. This was held to preclude the inference of any malice from the proof of killing, in that case.

Now we have *People v. Munn*, in 65 Cal. 211. It is a case as old as 1884. Here is what the court said back in those days.

'In the trial of cases of homicide committed by violence it is almost always important to consider the character of the weapon with which the homicide was committed, and all through the cases great emphasis is laid on the fact that a weapon likely to produce death was used by the accused. If the means employed be not dangerous to life, or, in other words, if the blows causing death are inflicted with the fist, and there are no aggravating circumstances, the law will not raise the implication of malice aforethought, which must exist to make the crime murder. The distinguishing character-
169 istic respecting the two crimes of murder and manslaughter is malice.

Without the presence of this element of malice the crime does not reach the

higher degree of murder, but amounts simply to manslaughter."

Now there is one more case here that is very interesting, where the court gave an instruction of malice to the jury on a second degree charge over the objection of the defense. That is *McAndrews v. People*, 1922, reported in 24 ALR 655, 71 Colo 542. The court reversed the conviction of murder in the second degree, refusing to predicate malice on the giving of a blow or blows with the fist following an altercation, precipitated by an offer of the deceased to appear as a witness, if needed, in an action against the defendant for damages arising out of an automobile collision, saying that the question of the malice of one killing another with a blow of the fist must be determined from the facts as they naturally appear to him at the time of the assault, that an intention to kill cannot be inferred from the striking of such a blow merely from the fact that death followed, and that an instruction to the effect that the jury could imply malice from the act and the result was, it appearing that the decedent was a person of mature years and full health, reversible error.

And I think that all of the citations here show that the law is perfectly well settled on that, that there can be no inference of malice in the death that occurred
170 as it has in this case.

There is a minority view in this citation but I don't think it is really a minority because there they sustain second degree murder convictions where the death did occur without a weapon but it usually was where a man hit him, the deceased fell down on the sidewalk or somewhere on the ground, and then the defendant would proceed to kick him or stomp on him or beat him to death with continual blows, where you could say it was such a malicious act so the man was bent on mischief, and there the jury would have evidence where they could infer malice. But as these cases show -- and I don't think that is really a minority view. That is just an exception to the general rule where you can have a death occur without a weapon of any kind being used.

And I think in the circumstances of this case that it would be erroneous for the Court to charge the jury on malice aforethought. And if it would be erroneous, at this point, I think the Court should be committed to grant a judgment of acquittal.

on murder in the second degree, leaving the only issue in the case at this point of manslaughter.

THE COURT: The motion is denied.

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171

MELVIN RUSH, SWORN

DIRECT EXAMINATION BY MR. SKEENS:

* * * * *

197 Q. Were you questioned by Detective Schwab of the Metropolitan Police Department? A. Yes, I was.

Q. Did you give him a statement? A. Yes, I did.

MR. SKEENS: May I have that statement, Mr. Hannon?

MR. HANNON: He is not a Government witness, your Honor.

THE COURT: This is your witness.

MR. SKEENS: Oh, no, your Honor. This witness was subpoenaed by the Government. I never subpoenaed this witness.

THE COURT: It doesn't matter who subpoenaed them. It is who calls him and puts him on the stand. He is your witness. And the usual rules apply.

MR. SKEENS: Your Honor is overruling my request?

THE COURT: Yes.

MR. SKEENS: I have nothing further.

CROSS EXAMINATION BY MR. HANNON:

* * * * *

208 Q. When he came over the fence on the sidewalk, what did Blenheim do?

A. Blenheim was still standing there. When Williams come across the fence Blenheim started to run.

209 Q. How did he run? A. Well, he couldn't run very fast.

Q. You know personally that he couldn't run very fast? A. I judge from the way he started to run.

Q. I am asking you how fast was he running? A. Well, I don't know. What you mean, how fast was he running? I don't know what you mean by how fast was he running. You mean speed, or what?

Q. You don't understand that question, how fast was he running? A. How fast was he running? He wasn't running very fast.

Q. Was he trotting? A. More of a trot.

Q. More than a walk? A. More than a walk.

Q. More than a trot? A. I say not more than a trot.

Q. Did he look as though he was running as fast as he could run? A. No. It looked as though he hadn't gotten to what you would say a full pace.

Q. There came a time Mr. Williams took off after him, is that right? A. Williams took off after him after he came across the fence.

210 Q. How fast was Williams running? A. He wasn't running fast either.

Q. And when he reached the car, sir, you say he was only three or four feet behind him? A. That is right.

Q. And then he ran about a block beyond there? A. He fell first.

Q. He fell? A. He fell between the two cars. The last two cars of the block.

Q. When he got up where was Blenheim? A. Blenheim was three quarters of the way down the street.

Q. How far in feet ahead of Williams was Blenheim at this time? A. After Williams fell?

Q. After Williams fell and got up. A. Oh, I would say, roughly I would say about maybe a hundred and fifty feet.

Q. Tell us in terms of the distance of the courtroom; the length of the courtroom? A. He was completely across from the north side of R Street to the south
211 side of R Street.

Q. Was Blenheim as far as this ahead of Williams, from where you are sitting to the court door in the rear of the court? A. He was further.

Q. And still Williams got up and still chased him, is that correct? A. That is correct.

* * * * *

214 Q. (By Mr. Hannon) Now, you recall that Mr. Blenheim died, sir, that you went to the Homicide Squad on Sunday, April 20, 1958; is that correct? A. That is correct.

Q. And at that time you talked to Sergeant Schwab of the Homicide Squad;

is that correct? A. That is right.

Q. And there was another police sergeant there, Sergeant Wallace, is that right? A. Well, I don't know his name.

Q. You made a statement at that time, did you not? A. That is right.

Q. And the statement was typed up? A. That is right.

MR. SKEENS: I object.

Q. (By Mr. Hannon) Did you --

MR. SKEENS: I object to any testimony or questioning whatever on that statement. I have never had the opportunity to see it. And I don't think the Government has any more right to use it any more than I do. I made the same question.

215 MR. HANNON: He can see it in a minute, your Honor.

THE COURT: Mr. Skeens, this witness is now being cross-examined. On cross-examination it is an elementary rule that the other side may ask him questions about previous statements that he has made if he has made any, and about them. Now, the Court has ruled.

MR. SKEENS: But I want to state for the record that he is saying that he has a written statement there which I have not seen and I can't compare it when he asks a question of this witness.

THE COURT: This isn't an adverse witness to you. This is your witness. You have called him.

MR. SKEENS: I stated my objection for the record.

THE COURT: Yes. It is on the record.

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* * * * *

REDIRECT EXAMINATION BY MR. SKEENS:

(At the bench:)

MR. SKEENS: May it please the Court, I am about to rest and before doing so I am just going to, for the record, make the proffer of introducing the entire file on the deceased, Augustus Blenheim, which I subpoenaed from the District of Columbia Jail, which I understand your Honor has already ruled on, but for the record I would like to renew my request at this time to introduce that entire file showing his record, his background, his drug addiction, and his prior record.

THE COURT: For the record, since you are making this, you might indicate

what there is in this record about a criminal record. The only thing that I saw
227 was a thirty-day sentence for larceny and I believe it was a 90-day sentence
for larceny and a sentence of 270 days I believe for larceny. There was no
assault, no robbery, no conviction of narcotics or any other conviction that I
found. Is that correct?

MR. SKEENS: That is substantially correct. He served voluntarily in
Lexington as a voluntary patient.

THE COURT: Yes, I noticed that; that he agreed to go there to be treated.
It wasn't for a long period of time. As I recall it, they came across the punctures
in his arms and from that adjudged that he was a narcotic addict or had been.

MR. SKEENS: I wanted to introduce that to couple that with the testimony
which I was not permitted to develop by the wife showing his unusual and disor-
ganized behavior prior to the assault in this case, indicating that it is possible
he may still have been under the addiction of those drugs. I wanted to go into
that further and inquire that of her also. I also wanted to inquire how he got the
plate in his head. Of course, I was not permitted to do that.

THE COURT: No, you were not.

MR. SKEENS: Outside of what your Honor has stated, that substantially is
what is in that file.

228 THE COURT: You know of any other conviction besides those three I have
mentioned of larceny?

MR. SKEENS: There are no crimes of violence. There are other convictions
for alcohol beverage control violations.

THE COURT: What do you mean by that? For being drunk?

MR. SKEENS: Served forty days -- No, it wasn't.

THE COURT: Do you have his record? I don't recall any conviction other
than those three I mentioned, and I went through it page by page because, as I
told you earlier, I am perfectly willing there should go in anything where there
is an indication of violence on his part since the defense is self-defense. Where
is it now that you are referring to?

MR. SKEENS: Thirty days for violation of A. B. C. regulation in 1955.

THE COURT: In Municipal Court, yes. I hadn't noticed that. That is a

liquor violation of some kind, I guess.

MR. HANNON: Keeping and selling, probably.

MR. SKEENS: He could have been making it, too.

THE COURT: That is not anything of violence.

MR. HANNON: Not for thirty days.

THE COURT: How much time do you all want this afternoon to argue the case?

MR. SKEENS: At this time, your Honor, I will formally rest the case for
229 the defense and I will renew my motion for a mistrial and renew my motion
for a judgment of acquittal on the charge of murder in the second degree, which
would leave only manslaughter in the case.

THE COURT: You are moving that now?

MR. SKEENS: Yes.

THE COURT: I will overrule those motions.

MR. SKEENS: Your Honor has that under advisement.

THE COURT: What?

MR. SKEENS: Those motions. I am just renewing.

THE COURT: I say, I am overruling it.

MR. SKEENS: Excuse me. I didn't understand.

THE COURT: I thought if we could, we could clear things up now so you
could begin your argument.

* * * * *

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AFTERNOON RECESS

(The Court reconvened 1:54 p. m.)

(At the bench:)

THE COURT: Mr. Skeens, these two are denied. I charge on self-defense,
however, very fully. And as for this request that they be instructed on inter-
vening agencies and so on, I don't feel that such an instruction is appropriate to
this case and I decline to give such a one. You haven't submitted any instruction
except just from this other case.

MR. SKEENS: Well, I'd like to read from the record this proposed instruc-
tion No. 1 of the Ross case, which I thought was appropriate here, so that the
record would be clear as to what instruction I was asking.

THE COURT: All right.

MR. SKEENS: The jury are instructed that in order to find Defendant Williams, the defendant at the bar, guilty of the offense charged, they must be convinced beyond a reasonable doubt that the defendant caused the death of Augustus Blenheim. If there was an intervening agency or cause over which the defendant had no control and was not put in motion by the original altercation between the defendant and the deceased, Augustus Blenheim, and if you further find that such an independent intervening circumstance occurred prior to the death of Augustus Blenheim and did not immediately flow from or result from the original injuries inflicted by the defendant, if he did in fact inflict any such injuries,
233 then the defendant is not responsible for the death of Augustus Blenheim, and if you have a reasonable doubt that it was the intervening circumstance which caused the death of Augustus Blenheim, and your verdict should be not guilty.

MR. HANNON: I have got two very short rebuttal witnesses, your Honor. It shouldn't take five minutes.

THE COURT: I think you better make your statement in open court that you rest. You have made it here but not in the presence of the jury.

MR. SKEENS: While we are here, in order to avoid additional trips to the bench -- I think we will be ready to argue this case. In view of your Honor's ruling on these instructions that I asked your Honor grant but you denied, I think my objection is not necessary, however I do except to the Court's ruling.

THE COURT: Yes.

MR. SKEENS: And I also raise the additional objection, before your Honor instructs the jury, on the question of malice in second degree murder.

THE COURT: I think under the rule you have to make these objections after the charge is given, so it is kind of waste of time to make it now.

MR. SKEENS: The reason why is this: I feel that even if the verdict should be manslaughter in this case, if this Court gives the instruction of malice to the jury, I feel it would be prejudicial to the case, which is going to result and cause a case of manslaughter. I say in advance it would be so

234 prejudicial, even if a verdict of second-degree murder would not occur, the giving of instruction of malice is going to affect the jury's deliberation and may result in bringing in, which I think it will, a verdict of guilty of manslaughter.

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238

LUCY SIMS, SWORN

DIRECT EXAMINATION BY MR. HANNON:

Q. Tell us your name, please. A. Lucy Sims.

Q. Where do you live? A. 509 L Street, Northwest.

Q. Lucy, on April 19th, the early morning hours, were you in the vicinity of Eleventh and R Streets, Northwest, here in the District of Columbia? A. I was.

239 Q. At that time was Augustus Blanheim and Adam Williams and Aaron Rodgers and others there? A. He was.

Q. Now, at that time, Mrs. Sims, I will ask you to answer this question yes or no. At that time, did somebody say to Blanheim or did somebody say to Alston, "If you didn't put crooked dice in the game, then don't give him any money?" A. No.

MR. SKEENS: Just a moment. Just a moment. Your Honor, I object most vigorously to this type of rebuttal. This witness has never testified in the case.

THE COURT: She doesn't have to testify in this case in order to be a rebuttal witness.

MR. SKEENS: She is not rebutting anything that was said about her. They are bringing this witness in about something that happened during testimony in this case which does not concern this witness, about what somebody else said, and that is improper.

THE COURT: Mr. Skeens, you are a mind reader then, because it hasn't been made obvious to me what is to be elicited from this witness.

(The question was read by the reporter.)

A. No.

240 THE COURT: The objection is overruled. The witness may answer.

MR. SKEENS: May I state for the record, then, what my objection is specifically?

THE COURT: No, you may not.

Q. (By Mr. Hannon) Miss Sims, at that time, did you say something to Marvin Alston? A. I told him don't give him no money back.

Q. You told Marvin Alston? A. Not to give Williams no money back.

Q. You told him? A. I told him that.

Q. Did you hear anybody else say that at any time?

MR. SKEENS: I object to the question, as to what somebody else said. She is not rebutting anything but merely adding to this trial what has already been testified to.

THE COURT: Mr. Skeens, a number of witnesses have testified here to what allegedly went on and was said at that time.

MR. SKEENS: I say it is improper rebuttal. This is my objection.

THE COURT: The objection is overruled.

Q. (By Mr. Hannon) Miss Sims, did you hear anybody else say that? A. No, I didn't. I was the one that said it.

241 MR. HANNON: Thank you very much.

MR. SKEENS: No questions.

THE COURT: You may step down.

* * * * *

270 MR. SKEENS: Your Honor, we haven't discussed a general instruction that the Court usually gives where the defendant does not testify. In this case, as in most cases, I specifically request that the instruction not be given. I think that as a matter of practice that instruction is more harmful to the defendant than it is good.

THE COURT: If I understand you correctly, you ask that an instruction not be given about the defendant not testifying, is that correct?

MR. SKEENS: Yes.

THE COURT: All right.

(Thereupon, at 3:04 p.m., a recess was taken until 3:10 p.m.) AFTER RECESS

JUDGE'S CHARGE TO THE JURY

THE COURT: Members of the jury: When a case is tried to a jury the Court consists of the Judge and the jury. Each has a separate function and

responsibility. It is the duty of the Judge to preside at the trial, to pass on questions of law as they arise, including the admissibility of offered evidence, and finally, at this stage of the proceeding, to instruct the jury as to the law.

271 You are the fact-finding body of the Court. Your responsibility is to determine what the facts are in this case. You are to decide what the facts are from the evidence in the case. The evidence in the case consists of the testimony which you have heard from the lips of the witnesses; the exhibits in this case and the stipulations of counsel which were stated to you in open court. I believe there were two stipulations. In addition, you may consider as evidence in the case those inferences which to your mind logically and reasonably arise from the testimony in the case.

You are not only the judges of the facts in this case but you are the judges of the credibility of the witnesses. That means that you are to determine the credit and weight you will give to the testimony of each witness who appeared here. In passing upon the credibility of a witness you may take into consideration the demeanor of the witness on the witness stand, whether the witness impressed you as a truth-telling individual or the contrary, whether the witness impressed you as having an accurate memory and recollection. Also you may consider the probability or improbability of the testimony of a witness, its reasonableness or unreasonableness. You may consider the friendship, if any, of a witness in a case toward a party concerned and determine whether or not that has colored the testimony of the witness in any way. Finally, you may take into consideration all those human factors shown by the evidence which may affect the desire or capability of a witness to give accurate testimony.

272 If you believe that any witness has willfully testified falsely as to any material matter about which the witness reasonably could not have been mistaken, then you are at liberty to disregard the whole of the testimony of that witness or such part of it as you believe to be untrustworthy. In other words, you may base your verdicts upon that testimony which you do believe to be true.

You are to be guided in this case by your recollection of the evidence. What the attorneys say to you is entitled to your careful consideration insofar as you

find it logical and reasonable and in accord with the evidence in the case. But each attorney is the advocate of his respective side. If the Court says anything to you, as the Court now is, you are to remember that what the Court says is not evidence. If your recollection differs in any way from the recollection of what counsel says or what the Court might say, it is your recollection that you are to be guided by.

Now at times throughout the trial the Court has been called upon to pass on the question whether or not certain offered evidence might properly be admitted. With such rulings and the reasons for them you are not concerned. Whether offered evidence is admissible is purely a question of law and from a ruling on such a question you are not to draw any inference as to what weight should be
 273 given the evidence or as to the credibility of a witness. In admitting evidence to which an objection is made the Court does not determine what weight should be given such evidence. As to any offer of evidence that was rejected by the Court, you of course must not consider the same as to any question to which an objection was sustained. You must not conjecture as to what the answer might have been or as to the reasons for the objection.

You are instructed that if the Judge has said or done anything which has suggested to you that she is inclined to favor the claims or position of either party, you will not permit yourselves to be influenced by any such suggestion. I have not expressed, nor intended to express, nor have I intimated nor intended to intimate, any opinion as to what witnesses are or are not worthy of credence, what facts are or are not established, or what inferences should be drawn from the evidence adduced. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

The purpose of an indictment is to inform the defendant of the charge against him and to place him on trial. An indictment is not evidence. It is not proof. When you take the indictment in this case to the jury room with you, you are to remember that the purpose of an indictment is to inform a defendant of the charge against him and that it is not evidence in the case.

274 The charge in the indictment is murder in the second degree. It includes

the lesser offense of the same nature, the lesser charge being manslaughter. So in this case, although the defendant is charged with murder in the second degree, your verdict may be any one of several kinds, depending upon what you find the facts are. First, your verdict may be guilty of murder in the second degree. Second, your verdict may be guilty of manslaughter. Third, your verdict may be a verdict of not guilty.

In the District of Columbia murder in the second degree is where a person unlawfully kills another with malice aforethought. Under the Code of Law for the District of Columbia murder in the second degree is defined as follows:

"Whoever, with malice aforethought, kills another is guilty of murder in the second degree."

Manslaughter is the unlawful killing of one person by another without malice aforethought. In a few minutes I shall explain to you what is meant by "malice aforethought" and will give you a more detailed explanation of the offense of murder in the second degree and manslaughter.

You are told that under the law the defendant is presumed to be innocent of each charge included in the indictment. The presumption of innocence is sufficient to acquit a defendant in a criminal case and to acquit the defendant in
 275 this case unless in your estimation the evidence convinces you of his guilt beyond a reasonable doubt; because the burden is always on the Government in a criminal case to establish guilt and never upon a defendant to establish innocence.

A "reasonable doubt" is a doubt which is based on reason and which is reasonable in view of the evidence in a case. The law does not require the Government to prove a crime charged to a mathematical or absolute certainty. What is required before you may convict is that the Government satisfy you of the guilt of a defendant beyond a reasonable doubt. If after an impartial comparison and consideration of all the evidence in the case you can candidly say to yourself that you are not satisfied of the defendant's guilt, then you have a reasonable doubt. But, on the other hand, if after an impartial comparison and consideration of all the evidence in the case you can say to yourself that you have an abiding

conviction of the defendant's guilt such as you would be willing to act upon in the more weighty and important matters of life relating to your own affairs, then you have no reasonable doubt. Now the law says that if you have a reasonable doubt, you must give the benefit of that doubt to the defendant.

I shall now read to you the charge in the indictment.

"The Grand Jury charges:

"On or about April 19, 1958, within the District of Columbia, Adam C. Williams, with malice aforethought, murdered Augustus S. Blenheim by means of striking him with his fist."

276 As I have already said, this indictment has been drawn under a statute which states:

"Whoever, with malice aforethought, kills another is guilty of murder in the second degree."

Now, this expression "malice aforethought" is an expression that has come down to us from England through hundreds of years. Now the word "malice" in its ordinary, every-day use means hatred or ill will which one person has toward another person. But, in its legal sense, the word has a broader significance. It is not necessary that there be shown any special or particular ill will or hatred or grudge on the part of the defendant against the deceased. Malice, as the law knows it, is a condition of mind or heart that prompts a man willfully to do an act injurious to another. Any unlawful act done intentionally and without legal justification or excuse is said to be done with malice.

Since no one can look into the heart or mind of another person, the only way for a jury to decide upon its condition at the time of a killing is to consider all the circumstances preceding and surrounding the killing as shown by the evidence, and from these circumstances the jury may infer the existence of malice or the absence of malice.

277 If one intentionally and wrongfully does an act which reasonably might be expected to cause death and the act does result in death, then the party who kills may be convicted of second-degree murder. In second-degree murder the person doing the killing may have had no intention to kill or may have been

without an intention to kill. I will state that again. In second-degree murder the person doing the killing may have had an intention to kill or may have been without an intention to kill. In other words, in second-degree murder the killing may be intentional or it may be unintentional. An unintentional or accidental killing is murder in the second degree where such a killing is with malice aforethought as I have explained that expression to you.

As I have already told you, manslaughter is a lesser offense than second-degree murder. Manslaughter is the unlawful killing of a person by another without malice aforethought. The difference between second-degree murder and manslaughter is that second-degree murder is an unlawful killing of one person by another with malice aforethought, while manslaughter is an unlawful killing of one person by another without malice aforethought.

Manslaughter denotes a killing done in a sudden heat of passion caused by an adequate provocation. It is such a killing as happens at times on a sudden quarrel. In order to reduce murder to manslaughter, however, the passion must be of such degree as would cause an ordinary man to act on impulse and without reflection. Passion resulting from fright or terror may be sufficient
 278 but mere words and gestures are not an adequate provocation to reduce the crime of murder to manslaughter. A blow of personal violence may be a sufficient provocation, but a trivial or a slight assault, entirely disproportionate to the violence of the retaliation, is not an adequate provocation. In addition to adequate provocation there must be passion and hot blood caused by that provocation to reduce murder to manslaughter.

Members of the jury, the defendant, Mr. Williams, has interposed the defense of self-defense. By this he claims he did what he did because, he says, he then believed, and he claims he had reasonable grounds for believing, that Mr. Blenheim was about to kill him or to do him great bodily harm. And the defendant claims, therefore, that his acts were lawful. Now the Government claims that the defendant was not acting in self-defense. Now it is for the jury to determine from the evidence in the case whether or not the defendant acted in self-defense.

In this connection you are told that under certain circumstances a person has the right to protect himself from assault by another and in order to do so may kill or injure such other person.

Now, as I have said, a person has a right to protect himself from assault by another. Now an assault is an unlawful effort with force and violence to
 279 do injury to the person of another, coupled with the apparent present possibility of carrying out such effort or attempt. This matter of self-defense is a serious matter and in order to avail oneself of the right of self-defense all of the following must exist. First, it must appear to the jury that at the time Mr. Williams, the defendant, struck Mr. Blenheim that Mr. Blenheim was then committing or about to commit an assault upon Mr. Williams. And by this is meant that Mr. Blenheim must have been doing some act in the commission of an assault or some act which would reasonably appear to the defendant that Blenheim was committing an assault. Second, the defendant Williams must have actually believed that an assault was being made or about to be made upon him by Augustus Blenheim and that it was necessary for him, that is, Williams, to do the striking complained of in order to defend himself. Third, the belief by the defendant, Mr. Williams, must have been a reasonable belief, that is, one that a reasonable person under the same circumstances would have been justified in entertaining. And fourth, the force used by the Defendant Williams in repelling the assault must not have been excessive; that is, must not have been disproportionate to the apparent menace facing the defendant.

In determining the question of whether or not at the time of the striking Mr. Williams really believed he was in danger of death or great bodily harm from Mr. Blenheim, and on the question of whether or not at that specific
 280 time the circumstances were such as to indicate reasonable ground for such a belief on Mr. Williams' part, that he was in danger of losing his life or of great bodily harm, and in determining whether or not he was under the circumstances justified in striking in self-defense, you may consider along with the other evidence in the case all the circumstances appearing in evidence attending the striking and immediately previous thereto and all the

evidence relating to the matter. If you believe from the evidence that the defendant, Mr. Williams, was so circumstanced or so situated at the time he struck Mr. Blenheim that he, Williams, honestly believed and had reasonable grounds for such belief that he could not save himself from serious bodily harm except by striking Mr. Blenheim, then he had a right to so protect himself and under those circumstances it would be the duty of the jury to find him not guilty. In other words, if you believe from the evidence that the defendant, Mr. Williams, struck the deceased while in the act of reasonably defending himself from the deceased, then your verdict would be not guilty.

But, on the other hand, if you find beyond a reasonable doubt that at the time of the striking Mr. Williams did not believe he was in danger of death or of great bodily harm from Mr. Blenheim, or if, in the alternative, you find beyond a reasonable doubt that although Mr. Williams did believe
281 he was in such danger the circumstances of the moment were not such as to constitute reasonable grounds for such a belief, or, if you find beyond a reasonable doubt that Mr. Williams was acting on the defensive but used disproportionate and excessive force to repel the apparent menace facing him, then under those circumstances the striking would not constitute an unlawful act. That is, it would not be in self-defense.

As I said earlier, it is for the jury to determine whether or not the defendant acted in self-defense.

Ladies and gentlemen, the defendant having interposed the defense of self-defense, the burden is upon the Government to establish by the evidence beyond a reasonable doubt that the defendant was not acting in self-defense as that term has been explained to you before you may convict. If the Government has not sustained that burden or if, after considering all the evidence, you have a reasonable doubt as to whether the defendant acted in self-defense, then you would find him not guilty.

Members of the jury, when you go to the jury room the first question for you to take up is this claim of self-defense. If you find that the defendant acted in self-defense, why then that would be the end of the case and you would return a verdict of not guilty. If you find beyond a reasonable doubt that he did not act in self-defense, then you would proceed to consider

282 the charge in the indictment.

If the jury should find beyond a reasonable doubt that the defendant, with malice aforethought, on or about April 19, 1958, in the District of Columbia, murdered Augustus S. Blenheim by means of striking him with his fist, then you may find the defendant guilty of second-degree murder.

If the jury should find beyond a reasonable doubt that on or about the day in question in the District of Columbia the defendant killed Blenheim in a sudden heat of passion, caused by an adequate provocation as those terms have been explained to you but without malice aforethought, you would then find the defendant guilty of manslaughter. If the jury believes that the defendant is innocent of any charge in the indictment or if the jury believes that the Government has failed to establish the guilt of the defendant as to a charge within the indictment beyond a reasonable doubt, then the defendant should be found not guilty. If the jury believes beyond a reasonable doubt that the defendant is guilty of second-degree murder or manslaughter but entertains a reasonable doubt as to whether it is murder or manslaughter, then the jury would find the defendant guilty of the lesser offense of manslaughter. When you go to the jury room you will there elect your foreman. Your foreman will give each of you an opportunity to express your views and will report your verdict upon your return to the courtroom. However, each of you may be asked to state the verdict, in which case you should be prepared to do so.

* * * * *

283 MR. SKEENS: May we approach the bench, your Honor?

THE COURT: Yes.

(At the bench:)

MR. SKEENS: First of all, I have three requests: that the jury be given the indictment and the statement of Williams and the statement of Melvin Rush to consider while deliberating the case.

THE COURT: I will tell you, I never send them any of the exhibits unless they ask for them. If they ask for them, I send them.

MR. SKEENS: I do request it in this instance; especially Melvin Rush, since I did not read it after it was admitted in evidence and they don't know what is in it.

I have checked the fact that the Court refused to instruct on intervening cause. I have submitted that instruction. I enter an objection on giving the
284 instruction of malice, on the ground that it is not warranted by the evidence. I object to the giving of the instruction on adequate provocation since that, coupled with malice, practically destroys my argument saying that provocation here means a guilty verdict of manslaughter. It is definitely extremely prejudicial in the defendant's point of view on this question of the guilt of manslaughter. I object to the failure of the Court to give defendant's instruction No. 1 and 2. I object to the failure of the Court to give the jury an instruction on the effect of opinion evidence given by the deputy coroner. I object to the Court's emphasis, on giving the instruction of malice without an intention to kill, and stating to the jury "I will state that again." That is the part in malice which says that there can be conviction of second-degree murder without intention to kill. I object, even though the instruction was given on malice, I say that it was inadequate and insufficient because it fails to include the usual instruction given by most judges and that is, malice must be determined by whether a man is bent on mischief, disregard of social duties, and the question of whether or not there is ill will or hatred being not necessary I think is an incorrect statement of the law, that ill will or hatred is not necessary to have legal malice. I object to the Court's failing to give an instruction on the difference between voluntary manslaughter and involuntary manslaughter, which
285 is what I requested in the offered prayer. I think the evidence in this case warrants the jury, if anything, to find a verdict of guilty of manslaughter, because it really was an involuntary manslaughter. True, it is no different in our law in the District. But involuntary manslaughter and voluntary manslaughter should be defined to this jury and that in the case of an involuntary manslaughter, where there is an occasion where an assault without malice and without intention to kill, that the defendant has the right to strike the first blow.

I object to the statement, when the Court was giving the instruction on self-defense, when it told the jury this was a serious matter, implying that the defense was a serious circumstance and implying under no circumstances the

jury should entertain it unless the following elements were given. And then in giving the elements the Court said a defendant must have a reasonable belief of danger at the instant that he was perpetrating the blow that caused the death of the deceased. I think he believed he was in reasonable danger under the entire circumstances of the confrontation with the deceased and throughout that entire time believed he had no way of escape, he had no choice but to assault him. Whether or not he had the belief at the instant he struck him or not is too restricted and destroys the benefit of that defense of self-defense. That is all.

* * * * *

286 THE COURT: Members of the jury, you will recall that during the trial Doctor Murphy was called as a witness. Some of the testimony that he gave was testimony as to facts and some of it was what is called opinion evidence.

You are told that a person who by education, study and experience has become an expert in any art, science or profession and who is called as a witness may give his opinion as to any such matter in which he is versed and which is material to the case. You should consider such expert opinion and should weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight. And you may reject it if in your judgment the reasons given for it are unsound.

As I explained to you, Doctor Murphy gave some testimony as to facts and some evidence within the classification known as expert opinion evidence. The instruction that I have just given you relates only to expert opinion evidence.

You may now retire and give to this case the same conscientious consideration that you would any matter of importance in your life.

289 (The Court reconvened at 1:40 p.m. prior to the jury returning to the jury box.)

Appearances: As previously noted.

THE CLERK: Case of Adam C. Williams, Criminal No. 699-58.

(The jury then, at 1:44 p.m., returned to the jury box.)

THE COURT: I have a note which reads as follows:

"Would Her Honor, the Judge, reinstruct the jury on all the necessary elements in the issue of self-defense.

"Could we be reinstructed on downgrading the indictment from second degree murder to manslaughter?"

I shall first deal with the matter of the claim of self-defense. The defendant Mr. Williams, has interposed the defense of self-defense. By this he claims he did what he did because, he maintains, he then believed, and he claims he had reasonable grounds for believing, that Mr. Blenheim was about to kill him or to do him great bodily harm. And Mr. Williams claims, therefore, that his acts were lawful. The Government claims that the defendant was not acting in self-defense. It is a question of fact for the jury to determine from the evidence whether or not the defendant acted in self-defense.

290 Under certain circumstances a person has the right to protect himself from assault by another and, in order to do so, may kill or injure such other person. However, this is a serious matter and in order to avail oneself of this right of self-defense the following must exist:

First, it must appear to the jury from the evidence that at the time Mr. Williams, the defendant, struck Mr. Blenheim that Mr. Blenheim was committing or about to commit an assault upon Mr. Williams. And by this is meant that Augustus Blenheim must have been doing some act in the commission of an assault or some act which would reasonably appear to defendant that Blenheim was committing an assault.

Second, the Defendant Williams must have honestly believed that an assault was being made or about to be made upon him by Augustus Blenheim and that it was necessary for him to do the striking complained of in order to defend himself.

Third, the belief by the defendant, Mr. Williams, must have been a reasonable belief, that is, one that a reasonable person under the same circumstances would have been justified in entertaining.

Fourth, the force used by the defendant, Mr. Williams, in repelling the assault must not have been excessive; that is, must not have been disproportionate to the apparent menace facing the defendant.

Now it is question of fact for the jury to determine whether in this case these circumstances existed. If you believe from the evidence that the defendant, Mr. Williams, was so circumstanced or so situated that at the time
291 he struck that he honestly believed and had reasonable grounds for such belief that he could not save himself from serious bodily injury except by striking Mr. Blenheim, then under those circumstances he had a right to so protect himself and it would be your duty to find him not guilty. In other words, if you believe from the evidence that the defendant, Mr. Williams, struck the deceased while in the act of reasonably defending himself from the deceased, then your verdict would be not guilty. But, on the other hand, if you find beyond a reasonable doubt that at the time of the striking Mr. Williams did not believe he was in danger of death or of great bodily harm from Mr. Blenheim, or if, in the alternative you find beyond a reasonable doubt that although Mr. Williams did believe he was in such danger the circumstances of the moment were not such as to constitute reasonable grounds for such a belief, or, if you find beyond a reasonable doubt that Mr. Williams was acting in self-defense but used disproportionate and excessive force to repel the apparent menace facing him, then under those circumstances the striking would not constitute a lawful act. It would not be in self-defense and the jury would then proceed to consideration of the charge in the indictment and the necessarily included lesser charge of manslaughter.

Now in connection with your request for further instruction on down-
292 grading the indictment from second-degree murder to manslaughter, you are told this: The difference between second-degree murder and manslaughter is that second-degree murder is an unlawful killing of one person by another with malice aforethought, while manslaughter is an unlawful killing of one person by another without malice aforethought. In other words, manslaughter is the unlawful taking of human life without malice but without legal justification or excuse. In short, it is an unlawful killing but without malice. Manslaughter denotes a killing done in a sudden heat of passion caused by an adequate provocation. It is such a killing as happens at times on a sudden quarrel. In order to reduce murder to manslaughter, however, the passion must be of such degree as would cause an ordinary man to act on

impulse and without reflection. Passion resulting from fright or terror may be sufficient but mere words and gestures are not an adequate provocation to reduce the crime of murder to manslaughter. A blow of personal violence may be a sufficient provocation but a trivial or slight assault entirely disproportionate to the violence of the retaliation is not an adequate provocation. In addition to adequate provocation there must be passion and hot blood caused by that provocation to reduce murder to manslaughter.

Do counsel desire to make any representations? They may do so at the bench.

293 (At the bench:)

MR. SKEENS: First of all, I'd like to say this, your Honor: that I object to the Court giving these instructions all over again because it is the same identical instruction that was given the first time and it is nothing new.

THE COURT: That is what they asked for, was a re-instruction on it.

MR. SKEENS: Yes, and further, I say that I will renew my objections that I made earlier.

THE COURT: Very well.

MR. SKEENS: And I also specifically object again to the instruction on malice.

THE COURT: I didn't give any instruction on malice. They didn't ask for any.

MR. SKEENS: I mean provocation, reducing it from second-degree to manslaughter. I think it confused the jury in view of the evidence in this case. But, most important of all, I think in the self-defense instruction your Honor gave it did not give the complete instruction your Honor gave the first time in that there was a portion in which your Honor stated to the jury that the Government had the burden of proving every element of the offense beyond a reasonable doubt and also that included --

THE COURT: They didn't ask for that. The request was the necessary elements in the issue of self-defense.

294 Go ahead, you put on the record whatever you want.

Now it is question of fact for the jury to determine whether in this case these circumstances existed. If you believe from the evidence that the defendant, Mr. Williams, was so circumstanced or so situated that at the time

291 he struck that he honestly believed and had reasonable grounds for such belief that he could not save himself from serious bodily injury except by striking Mr. Blenheim, then under those circumstances he had a right to so protect himself and it would be your duty to find him not guilty. In other words, if you believe from the evidence that the defendant, Mr. Williams, struck the deceased while in the act of reasonably defending himself from the deceased, then your verdict would be not guilty. But, on the other hand, if you find beyond a reasonable doubt that at the time of the striking Mr. Williams did not believe he was in danger of death or of great bodily harm from Mr. Blenheim, or if, in the alternative you find beyond a reasonable doubt that although Mr. Williams did believe he was in such danger the circumstances of the moment were not such as to constitute reasonable grounds for such a belief, or, if you find beyond a reasonable doubt that Mr. Williams was acting in self-defense but used disproportionate and excessive force to repel the apparent menace facing him, then under those circumstances the striking would not constitute a lawful act. It would not be in self-defense and the jury would then proceed to consideration of the charge in the indictment and the necessarily included lesser charge of manslaughter.

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292 grading the indictment from second-degree murder to manslaughter, you are told this: The difference between second-degree murder and manslaughter is that second-degree murder is an unlawful killing of one person by another with malice aforethought, while manslaughter is an unlawful killing of one person by another without malice aforethought. In other words, manslaughter is the unlawful taking of human life without malice but without legal justification or excuse. In short, it is an unlawful killing but without malice. Manslaughter denotes a killing done in a sudden heat of passion caused by an adequate provocation. It is such a killing as happens at times on a sudden quarrel. In order to reduce murder to manslaughter, however, the passion must be of such degree as would cause an ordinary man to act on

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THE COURT: Very well.

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THE COURT: I didn't give any instruction on malice. They didn't ask for any.

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THE COURT: They didn't ask for that. The request was the necessary elements in the issue of self-defense.

294 Go ahead, you put on the record whatever you want.

MR. SKEENS: I think your Honor should have given the entire instruction of self-defense which would tell them that we don't have to prove our innocence or make out self-defense; if they have a reasonable doubt that the defendant acted in self-defense, they must find him not guilty.

MR. HANNON: I think your Honor has answered the request to the jury and I don't think it is necessary for your Honor to re-hash your charge as counsel has in substance requested. You covered what the jury asked for. You have adequately covered the instruction on self-defense.

* * * * *

(At 3:00 p.m. the jury returned to the jury, whereupon the following proceeding were had:)

THE CLERK: Mr. Foreman, has the jury agreed upon a verdict?

THE FOREMAN: We have.

295 THE CLERK: What say you as to the defendant, Adam C. Williams?

THE FOREMAN: Guilty of manslaughter with recommendation for leniency.

THE CLERK: Members of the jury, your foreman says you find the defendant Adam C. Williams guilty of manslaughter and that is your verdict, so say you each and all?

(Yes.)

MR. SKEENS: Request for the jury to be polled.

THE CLERK: Members of the jury, as I call your names, please state your individual verdicts.

Charles W. Price

JUROR PRICE: Manslaughter with the recommendation of leniency.

THE CLERK: Beatrice E. Albers.

JUROR ALBERS: Manslaughter with recommendation of leniency.

THE CLERK: Harry L. Lythle.

JUROR LYTHLE: Manslaughter with recommendation of leniency.

THE CLERK: Carl W. Loeber.

JUROR LOEBER: Manslaughter with recommendation of leniency.

THE CLERK: Frank R. Jennick.

JUROR JENNICK: Manslaughter with recommendation of leniency.

296 THE CLERK: Virgil G. Hallman.

JUROR HALLMAN: Manslaughter with recommendation of leniency.

THE CLERK: John L. Green.

JUROR GREEN: Manslaughter with recommendation of leniency.

THE CLERK: Carrye G. Gentry.

JUROR GENTRY: Manslaughter with recommendation of leniency.

THE CLERK: Nellie B. Galloway.

JUROR GALLOWAY: Manslaughter with recommendation of leniency.

THE CLERK: Maude R. Wright.

JUROR WRIGHT: Manslaughter with recommendation of leniency.

THE CLERK: Paul C. Balderson:

JUROR BALDERSON: Manslaughter with recommendation of leniency.

THE CLERK: Williema W. Blackwell.

JUROR BLACKWELL: Manslaughter with recommendation of leniency.

THE CLERK: Is there any member of the jury whose name I have not called?

Your Honor, the jury has been polled.

297 MR. SKEENS: May it please the Court, before your Honor discharges this jury I would like the Court to make an inquiry of this jury whether or not their verdict is manslaughter regardless of whether there is a recommendation. Because, as your Honor knows, the jury has no right to recommend leniency to the Court as part of its verdict or as a condition. I think their verdict has to be manslaughter and if it is a compromise or if there is a doubt or someone holding out because of a manslaughter verdict and the condition was attachment of that statement, I don't think that that is a proper verdict.

THE COURT: The Court disagrees.

The jury is now excused.

* * * * *

[Filed August 29, 1958]

United States

vs.

Adam C. Williams,
Defendant

Criminal No. 699-58

Charge: Second Degree Murder

On this 28th day of August, 1958, came again the parties aforesaid, in manner aforesaid, and the same jury as aforesaid in this cause, the hearing of which was respited yesterday; whereupon the jury resumes their deliberations at 9:30 A.M.; thereupon, the jury return into Court and upon their oath say that the defendant is Guilty of manslaughter with recommendation of leniency; whereupon each and every member of the jury is asked if that is his or her verdict and each and every member thereof says that the defendant is Guilty of manslaughter with a recommendation of leniency.

The case is referred to the Probation Officer of the Court and the defendant is remanded to the District of Columbia Jail.

By direction of
Burnita Shelton Matthews

Presiding Judge
Criminal Court # 1

HARRY M. HULL, Clerk

By /s/ Lloyd E. Dietrich
Deputy Clerk

Present:

United States Attorney

By Joseph Hannon
Assistant United States Attorney

E. Romig, Official Reporter

[Filed October 1, 1958]

On this 26th day of September, 1958 came the attorney for the Government and the defendant appeared in person and by counsel, Edward J. Skeens, Esquire.

It is ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of

Manslaughter

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the con-

trary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Two (2) years to Seven (7) years

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Burnita Shelton Matthews
United States District Judge.

Clerk.

To Alfred Hantman, Esq. Assistant United States Attorney.

You are hereby commanded to appear in the United States District Court for the District of Columbia at your office in the city of Washington, D. C. on the 18th day of July 1958 at 10 o'clock A.M. in the case of United States vs. Adam C. Williams and bring with you a list of potential witnesses to be called by the government for trial; a copy of A. C. Williams the defendant, statement given concerning the occurrences in this case; and copies of all statements, memoranda, reports concerning relevant information about any of the occurrences or available evidence in the above entitled cause.

This subpoena is issued upon application of the defendant

June 26, 1958

Edward J. Skeens
Attorney for Defendant
1500 Mass Ave., N.W.
Address

HARRY M. HULL

By **/s/ Irene B. Burroughs**

Deputy Clerk

Oliver Gasch, United States Attorney
Received this subpoena at and on June
27, 1958 served it on the within named

RETURN

Washington, D. C. on 27th day of
June, 1958 at U. S. Courthouse,

by delivering a copy to him.

Washington 1, D. C. Alfred
Hantman, Esq. personally

Dated:

/s/ Edward J. Skeens

June 27, 1958

[Filed August 27, 1958]

Defendant's Instruction No. 1

The jury are instructed that if you find that the deceased, Augustus S. Blenheim, DIED from an assault and battery which was unlawful, but not of a character of itself to cause death, and that the death was unintentionally caused by a blow with the fist of the defendant, then such killing constitutes involuntary manslaughter.

But, if you find that the defendant struck the deceased with his fist in self defense, as I have defined that term to you, then the assault and battery committed by the defendant would not constitute an unlawful assault, and you must find the defendant not guilty of murder in the second degree or manslaughter.

Defendant's second instruction

The jury are instructed that to justify an assault in self-defense, as I have defined that term to you, there must be a reasonably well - founded apprehension of serious bodily harm, and where such danger is imminent, the defendant need not await until he is struck, but may protect himself by striking the first blow. However, the defendant may not lawfully strike the first blow where the danger is potential only or might arise in the future.

Hughes v. State 10 N.E. 2nd 629; 212 Ind. 577.

State v. Daugherty 196 S.W. 2nd 627. (Mo.)

State v. Brooks 84 A. 225; 3 Boyce (Del.) 203 and p. 176 for State v. De Paolo.

Denied as drawn.

/s/ Matthews, J

[Received October 13, 1958]

NOTICE OF APPEAL

Name and address of appellant

Adam C. Williams
District of Columbia Jail
Washington, D. C.

Name and address of appellant's attorney

Edward J. Skeens
1500 Mass. Ave., N.W.#13

Offense Second Degree Murder

Concise statement of judgment or order, giving date, and any sentence
Sentence of 2 years to 7 years entered Sept. 26, 1958 upon a conviction
of manslaughter.

Motion to dismiss indictment denied and motion to modify subpoena granted
Aug. 8, 1958 and denial motion for pre-trial relief on May 29, 1958.

Name of institution where now confined, if not on bail

District of Columbia Jail

I, the above-named appellant, hereby appeal to the United States Court
of Appeals for the District of Columbia Circuit from the above-stated
judgment.

October 13, 1958
Date

for: Adam C. Williams
Appellant

by /s/ Edward J. Skeens
Attorney for Appellant.

BRIEF FOR APPELLEE

United States Court of Appeals

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT
For the
District of Columbia Circuit

No. 14,796

FILED

APR 16 1959

ADAM C. WILLIAMS, APPELLANT

Joseph W. Stewart

v.

CLERK

UNITED STATES OF AMERICA, APPELLEE

670

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

OLIVER GASCH,

United States Attorney.

CARL W. BELCHER,

EDGAR T. BELLINGER,

Assistant United States Attorneys.

United States Court of Appeals
For the
District of Columbia Circuit

Received
FILED

APR 13
MAR 30 1959

Joseph W. Stewart

CLERK

QUESTIONS PRESENTED

In the opinion of the appellee, the following questions are presented:

(1) Does a "probable defendant" in a homicide case have a right to counsel at a coroner's inquest, and, if so, is the lack of counsel, reversible error when the accused, after being advised of his rights, made a voluntary statement which was not used against him at trial?

(2) In a homicide case, did the trial court err by refusing to permit appellant to introduce a criminal record indicating conviction of larceny and alcoholic beverage control violations on the part of the deceased?

(3) Is provocation caused by alleged cheating at dice a defense to manslaughter?

(4) Where there is no evidence of any other injury to the deceased from the time of the appellant's assault until the deceased's death, is denial of a proffered instruction on "intervening cause or hospital negligence" reversible error?

(5) Is pre-trial denial of production of statements of potential government witnesses proper?

(6) Is denial of a request made during cross-examination of the final government witness, for production of prior witnesses' statements, an abuse of discretion?

(7) Does the record support an assertion of prejudice to the appellant by the conduct of the trial court?

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,796

ADAM C. WILLIAMS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

In the early morning hours of April 19, 1958, appellant engaged in a dice game which lasted between thirty to forty-five minutes with one Augustus Blanheim and several others (J.A. 51). After the game concluded appellant demanded his money back from Blanheim and Alston, claiming Blanheim had used crooked dice even though the latter had not won. Appellant said, "If somebody don't give me my money back, I'm going to blow somebody away." (J.A. 52)

After everyone left the premises and went outside, appellant continued to demand his money back (J.A. 52-53). He "told Alston that he wasn't going to get in the car unless he got his money back." (J.A. 53) One of the girls pushed Alston in the car, and they drove away. Appellant

then said, "Well, I am going to get one of you," and started to chase Blanheim up the street. (J.A. 53) When he caught up with Blanheim, he hit him with his fist, and Blanheim "went down and bounced on the concrete twice. It was his head that hit the concrete." (J.A. 85) Returning, appellant met the others at the corner, and in response to a question if he had hurt the man, replied, "Yes, I hit him with my fist." (J.A. 55) The others, seeing Blanheim lying unconscious on the sidewalk, picked him up and took him to Freedman's Hospital (J.A. 54, 55, 61).

While waiting at the hospital, Blanheim regained consciousness, and said that he would be all right and that he wanted to go home (R. 62). Alston then took him home (R. 115). He was weak and staggering. His wife managed to get him upstairs to bed, and about 8:00 a.m. the next morning, she took him back to the hospital. (R. 141-143). He was admitted, received "supportive treatment," and was operated on (R. 85). The diagnosis was "[l]eft occipital skull fracture with massive right and small left subdural hematoma." (J.A. 66) He died that day at 7:12 p.m. (R. 86).

About 10:00 a.m. the next day, Detective Sergeant Roy Schwab went to a premises where he interviewed appellant who told him about the dice game, and of how he had chased Blanheim and hit him. He was placed under arrest, and taken to police headquarters. (J.A. 78-80)

The following morning (Monday, April 21), appellant was brought before the Municipal Court on the homicide charge. Two attorneys were appointed to represent him. Thereafter the case was continued until the next day.¹

On April 22, 1958, "[p]ursuant to notice theretofore given to all known interested parties," an inquest concerning the death of Augustus Blanheim was held before the coroner at the District of Columbia Morgue (J.A. 3). Various witnesses testified (J.A. 5-18). Appellant was then given the opportunity to make a voluntary statement be-

¹ The Municipal Court record does not disclose the reason for the continuance or who requested it.

fore the coroner's jury; however, before permitting him to do so, the Coroner advised him that he had the privilege not to say anything, that if he said anything, it could be used against him, and that he could wait and talk to a lawyer (J.A. 18-19). Appellant chose to make a statement and said that the dice game had been crooked, that he chased the deceased up the street, that when he caught up with him, the deceased turned and grabbed him, and that he then hit the deceased in the face knocking him to the ground (J.A. 20-21). The Coroner's jury found appellant responsible for the death of Blenheim, and held him for action of the grand jury (J.A. 24).

An indictment was filed for second degree murder, and on August 26, 1958, a trial was held before a jury (J.A. 2, 50). Appellant conceded in his opening statement that he had struck the decedent and that the latter had hit the sidewalk and died as a result. He claimed self-defense. (R. 10)

On cross-examination of government witness Aaron Rodgers, appellant proposed to show that the decedent had a reputation for larceny by asking the witness about the decedent's criminal record. The court denied this proffer. (J.A. 56) On cross-examination of the decedent's widow, Mrs. Florence Blenheim, appellant sought to ask her about her husband's record of larceny and alcoholic beverages control violations convictions as well as whether she knew her husband was taking heroin in January, 1940. This was also denied, the court ruling that it would only permit evidence that might "indicate in the past the decedent was an assaultive nature, the defendant knew it and caused him to feel he had to take action in defense of his life." (J.A. 75, 76)

During cross-examination of Detective Sergeant Schwab, the final government witness, appellant requested the written statements of the previous government witnesses be produced for his "examination" (J.A. 82). This request was denied as being too late since the witnesses had all concluded their testimony (J.A. 83).

After the conclusion of the government's case, appellant made a motion for mistrial for the reason that from the

court's rulings "the jury took the view that the statements made where I was ordered to sit down, and the other remarks of that nature, imbued in the jury's mind the fact that I am belligerent with the Court, the fact that I have disrespect for the Court, which of course I deny. . . ." This motion was denied. (J.A. 85-86)

Melvin Rush was called as a witness for the defense. At the conclusion of his direct examination, appellant requested the written statement which Rush had given to the police. This request was denied by the court. (J.A. 89) The statement was subsequently used by the government during cross-examination, and made available to the defense at that time (J.A. 91).

At the conclusion of appellant's case he made "the proffer of introducing the entire file on the deceased, August Blenheim, . . . showing his record, his background, his drug addiction, and his prior record." This motion was denied. (J.A. 91-93)

Appellant submitted two instructions concerning involuntary manslaughter and self-defense (J.A. 114). These were denied, the court stating it would charge fully on self-defense (J.A. 93). Appellant also requested a charge on "intervening agency or cause" which was denied as not appropriate to the case (J.A. 93-94).

The jury found appellant guilty of manslaughter, and on September 26, 1958, he was sentenced to a term of imprisonment of from two to seven years (J.A. 112-113). This appeal followed (J.A. 115).

STATUTES INVOLVED

Title 11, District of Columbia Code § 1205 provides:

Witnesses—Testimony reduced to writing—Murder or manslaughter.

Witnesses may be summoned and compelled by the coroner to attend before him and give evidence, and shall be liable in like manner as if the summons had been issued by the municipal court. And it shall be his duty, upon every inquisition taken before him where

any person is charged with having unlawfully caused the death of the person on whom the inquest is held, to reduce the testimony of the witnesses to writing, and if the jury find that murder or manslaughter has been committed on the deceased, he shall require such witnesses as he thinks proper to give a recognizance to appear and testify in the District Court of the United States for the District of Columbia, and shall return to said court the said inquisition and testimony and recognizance by him taken.

Title 22, District of Columbia Code § 2405 provides:

Whoever commits manslaughter shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding fifteen years, or by both such fine and imprisonment.

Amendment 6 of the Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; and have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Title 18, United States Code § 3500 provides:

Demands for production of statements and reports of witnesses.

(a) In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) to an agent of the Government shall be

the subject of subpoena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.

(b) After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

(c) If the United States claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the United States to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised the court shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this section, the court in its discretion, upon application of said defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its use in the trial.

(d) If the United States elects not to comply with an order of the court under paragraph (b) or (c) hereof to deliver to the defendant any such statement, or such portion thereof as the court may direct, the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interest of justice require that a mistrial be declared.

(e) The term "statement", as used in subsection (b), (c), and (d) of this section in relation to any witness called by the United States, means—

(1) a written statement made by said witness and signed or otherwise adopted or approved by him; or

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to an agent of the Government and recorded contemporaneously with the making of such oral statement.

Rules of Criminal Procedure, Rule 44 provides:

Assignment of Counsel

If the defendant appears in court without counsel, the court shall advise him of his right to counsel and assign counsel to represent him at every stage of the proceeding unless he elects to proceed without counsel or is able to obtain counsel.

SUMMARY OF ARGUMENT

An accused has neither a constitutional nor a statutory right to counsel at the coroner's inquest. And where the accused made a voluntary statement, after being advised of his rights, lack of counsel in no way affected his subsequent conviction. In any event the voluntary statement was not used against him on the trial. It follows therefore that no prejudice resulted.

A photostatic copy of a police record is not a proper proffer of proof, and convictions which do not indicate any

quarrelsome or assaultive nature on the part of the deceased are not admissible in evidence in a homicide case. Provocation is not a defense to manslaughter.

It is not error to deny instructions which are neither appropriate in law or fact.

Witnesses' statements need not be produced before trial. At trial and only when a witness is testifying may a defendant request production. The request not made until cross-examination of the final government witness, and after the other witnesses had long since completed their testimony, comes too late.

The record does not support any claim of conduct on the part of the trial court as would constitute prejudice to the rights of the accused.

ARGUMENT

I

Appellant's Rights Were Not Violated By Lack Of Counsel At The Coroner's Inquest

Appellant asserts a fatal defect in his conviction on the basis that he had no counsel at the coroner's inquest. There is no constitutional right to counsel at a preliminary hearing.² See *Council v. Clemmer*, 85 U.S. App. D.C. 74, 177 F.2d 22, 23 (1949), *cert. denied*, 338 U.S. 880 (1949); *Burall v. Johnston*, 146 F.2d 230 (9th Cir. 1944), *cert. denied*, 325 U.S. 887 (1945). Cf. *State v. Sullivan*, 227 F.2d 511 (10th Cir. 1955), *cert. denied*, *Braasch v. State of Utah*, 350 U.S. 973 (1956).

Statutorily, Rule 44 of the Federal Rules of Criminal Procedure provides for the assignment of counsel.³ How-

² "There is no constitutional right to a preliminary hearing prior to indictment or prior to trial." *Clarke v. Huff*, 73 App. D.C. 351, 119 F.2d 204 (1941); see also, *Hughes v. Gault*, 271 U.S. 142, 149 (1926).

³ Assignment of counsel in the Municipal Court is provided for in Rule 24 of the Municipal Court Criminal Rules which is based on F.R.Cr.P. 44.

ever, it excludes any requirement of counsel before indictment. The Advisory Committee Note 2 provides:

"2. The rule is intended to indicate that the right of the defendant to have counsel assigned by the court relates only to proceedings in court and, therefore, does not include preliminary proceedings before a committing magistrate. * * *"

Thus it is apparent that an accused has no right to counsel at preliminary proceedings, such as a coroner's inquest, before indictment. As stated by Mr. Justice Reed in *Porter v. United States*, 103 U.S. App. D.C. 385, 392, 258 F.2d 685, 692 (1958):

"The time that an accused is entitled to counsel for the protection of his rights on criminal charges is from arraignment, that is, plea after indictment, to the conclusion of his trial."

See *Gilmore v. United States*, 129 F.2d 199 (10th Cir. 1942), cert. denied, 317 U.S. 631 (1942); cf., *Hawk v. Olsen*, 326 U.S. 271, 278 (1945).

The coroner acts in a quasi-judicial capacity. *Neely v. United States*, 79 U.S. App. D.C. 177, 144 F.2d 519 (1944), cert. denied, 323 U.S. 754 (1944). However, it does not appear that he has either the duty or the authority to appoint counsel. His duty is only to take testimony, and if the jury's verdict necessitates further action, he "shall require such witnesses as he thinks proper to give recognizance to appear and testify in the District Court. . . ." 11 D. C. Code § 1205. In the case of probable defendants, the coroner may take their testimony "provided it is given voluntarily after advice as to their rights" *Neely v. United States*, supra, p. 520.

In the case at bar, appellant was appointed two attorneys by the Municipal Court; at the coroner's inquest, he was carefully advised of his rights by the coroner before being permitted to make a voluntary statement, not under oath; and his statement, which was substantially the same as his

previous oral and written ones, was never used against him at the trial. Clearly, appellant neither had a right to counsel nor was prejudiced by the lack of one, at the coroner's inquest.

II

A Decedent's Criminal Record For Larceny Is Not Admissible In A Homicide Case

Appellant claims error in the court's refusal to allow him to introduce a criminal record allegedly belonging to the deceased. It is of course clear that where self-defense is an issue, a defendant may show that the deceased had a general reputation for being a man of quarrelsome and dangerous character. *Smith v. United States*, 161 U.S. 85 (1896). However, character evidence is limited to general reputation, and does not extend to particulars. *Josey v. United States*, 77 U.S. App. D. C. 135, 135 F. 2d 809, 811 (1943); see also, *Michelson v. United States*, 335 U.S. 469, 477 (1948); *Stewart v. United States*, 70 App. D. C. 101, 104 F. 2d 234 (1939).

It is also apparent that evidence of bad moral character on the part of the deceased is not admissible since it has no bearing on any issue in the case. *Stacey v. Commonwealth*, 189 Ky. 402, 225 S. W. 37 (1920); see also *State v. Hodgins*, 210 N. C. 371, 186 S. E. 495 (1936); compare *State v. Williams*, 50 Nev. 271, 257 P. 619 (1927) (evidence of being a drug addict); *Bond v. State*, 107 Tex. Cr. R. 453, 296 S. W. 602 (1927) (evidence of conviction for theft). Thus the fact that a decedent may have been previously convicted for larceny and alcoholic beverage control violations, and may have used heroin in 1940, has no materiality even when self-defense is claimed. This is particularly true when there is no showing that the accused was aware of such facts.

In any event, there would be no error in denying the proffer of a "criminal arrest record" which would not be either the best or proper evidence.

III

Provocation Is Not A Defense To Manslaughter

Appellant "earnestly contends that this Court should declare that considerable provocation constitutes a complete defense to manslaughter where the death results from an assault not calculated to cause death or serious bodily harm." (App. Br. 8) This contention is patently of no merit. There is no authority to support an assertion that "[t]he law is clear that considerable provocation is a complete defense to homicide." Appellant's citations do not support his position.⁴ "Provocation" is used in reducing murder to manslaughter. As this Court said in *Bishop v. United States*, 71 App. D. C. 132, 107 F. 2d 297, 302 (1940): "The crime of manslaughter occurs when the killing is done in the 'heat of passion' engendered by adequate provocation." See also *Hart v. United States*, 76 U.S. App. D. C. 193, 130 F. 2d 456 (1942).

In any event the proposed instructions here appear to concern self-defense rather than provocation. (See J.A. 14). If this be so, and the complaint be as to their denial, it is of no merit since the court completely and adequately charged the jury on the law of self-defense, which appellant does not appear to dispute.

IV

The Proposed Instruction On "Intervening Cause" Was Properly Denied

Appellant also claims error in the court's denial of his proffered instruction "on intervening cause or hospital

⁴ Appellant citations appear unrelated to his asserted point. 6 C.J.S. Assault & Battery §91 (Provocation) is concerned with "In the absence of a statute to the contrary provocation is not a defense to the prosecution for assault and battery, although in some jurisdictions the fact that the accused detected the injured party in committing or attempting to commit adultery with his wife is a defense." *Commonwealth of Pennsylvania v. Buzard*, 22 A.L.R. 2d 846 [365 Pa. 511, 76 A.2d 394 (1950)] appears not to be concerned with "provocation" but with the inference of malice or intent to kill where a killing is by blow without a weapon.

negligence" (App. Br. 8). It is hornbook law that if an accused causes an intervening force to operate or sets in motion a chain of circumstances which produce the unlawful result, he is held responsible. See *People v. Lewis*, 124 Cal. 551, 57 P. 470 (1889). This is true even where the doctor's treatment was faulty.⁵ *People v. Kane*, 213 N.Y. 260, 107 N. E. 655 (1915). Nevertheless, since there was no evidence to indicate any intervening cause or hospital negligence, there could be no error in denying a proposed instruction based thereon. It is well established that it is not error to refuse an instruction which is neither appropriate in form and substance nor warranted by the issues or evidence. See *McAffee v. United States*, 70 App. D. C. 142, 105 F. 2d 21 (1939); *Apel v. United States*, 247 F. 2d 277 (8th Cir. 1957).

V

The Denial Of Production Of Statements Was Proper

Appellant claims reversible error in the denial of production of certain witnesses' statements (App. Br. 9). It is immediately clear that the statements of the witnesses are not subject to production by pre-trial motion or subpoena. The so-called Jencks law specifically provides that ". . . no statement or report in the possession of the United States . . . shall be subject of subpoena, discovery, or inspection *until said witness has testified on direct examination in the trial of the case.*" (Emphasis supplied.) 18 U.S.C. § 3500(a). This was clear even under the ruling of the Supreme Court in the Jencks case wherein it said,

"We now hold that the petitioner was entitled to an order directing the Government to produce for inspection all reports . . . , *touching the events and activities as to which they testified at the trial.*" (Emphasis supplied.) *Jencks v. United States*, 353 U.S. 657, 668 (1957).

⁵ Also failure of the deceased to secure proper medical attention is no defense. See *Hopkins v. United States*, 4 App. D.C. 430 (1894).

At the trial, the statements were available for use in cross-examination at the conclusion of each witness' testimony on direct examination. See J.A. 82. Appellant apparently did not consider that any statements were necessary for this purpose, since his demand for their production was not made until the conclusion of his cross-examination of the final government witness, Detective Schwab. Appellant made no claim that any statements were necessary in his cross-examination, and indeed his actions distinctly indicated the contrary. It was within the discretion of the trial court to refuse to reopen the examination of witnesses who had long since completed their testimony. Clearly there was no abuse of that discretion under the circumstances here, especially when appellant did not even indicate that he desired to reopen his cross-examination, merely that he "would like to have those statements produced for my examination" (J.A. 82).

As to the statement of the witness Rush, it was not subject to production since he was not called by the Government, but was a defense witness. To be subject to production the statement must be that of a witness "called by the United States". 18 U.S.C. § 3500 (b). Production is for impeachment purposes only and not for appellant's general perusal.⁶ It is not without significance that appellant did not request this statement until the end of his direct examination of the witness.

VI

The Trial Court's Conduct Was Not Prejudicial

Finally appellant attempts to reverse his conviction on the claim that the trial court made "prejudicial admonitions and comments." (App. Br. 10.) This argument is

⁶ In its "Analysis of the Bill", the House Committee stated: "The bill . . . provides that such statements or reports are to be used for impeachment purposes only and then only of Government witnesses and are not subject to production until the witness has been called and has testified for the Government." H.R. Rep. No. 700, 85th Cong., 1st Sess. (1957).

without basis in law or fact. The statements of the trial court even taken out of context clearly were in no way prejudicial to the rights of appellant, and under the circumstances were entirely proper. The trial court may take whatever appropriate action is necessary to maintain proper conduct. See *Butler v. United States*, 191 F.2d 433 (4th Cir. 1951); *United States v. Dennis*, 183 F.2d 201, 225 (1950), *aff'd*, 341 U.S. 494 (1951).

As to the assertion of the court's "hostility, facial expressions and general attitude", the record is barren of anything that would give the slightest credence to such a statement. In any event, that "... if the intonations and gestures of a trial judge are erroneously detrimental to a defendant in a criminal case it is the duty of counsel to record fully and accurately, at the time and on the record, although not in the hearing of the jury, what has transpired." *Butler v. United States*, 88 U.S. App. D.C. 140, 188 F.2d 24, 25 (1951); *Billeci v. United States*, 87 U.S. App. D.C. 274, 184 F.2d 394, 402 (1950). This he failed to do.

CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment of the district court be affirmed.

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